



**REGULAR HOUSING AND REDEVELOPMENT AUTHORITY MEETING  
VIRTUAL MEETING HELD VIA WEBEX**

**JULY 20, 2020**

**7:00 PM**

Call to Order

Open Forum

Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the Housing and Redevelopment Authority on items not on the agenda. Individuals who wish to address the Housing and Redevelopment Authority must have submitted comments to [ldubois@richfieldmn.gov](mailto:ldubois@richfieldmn.gov) prior to the meeting.

Approval of the minutes of the Regular Housing and Redevelopment Authority meeting of June 15, 2020.

**AGENDA APPROVAL**

1. **Consent Calendar contains several separate items which are acted upon by the HRA in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further HRA action on these items is necessary. However, any HRA Commissioner may request that an item be removed from the Consent Calendar and placed on the regular agenda for HRA discussion and action. All items listed on the Consent Calendar are recommended for approval.**

- A. Consideration of the adoption of a resolution approving the issuance of, and providing the form, term, covenants and directions for the issuance of its Tax Increment Financing Limited Revenue Note, Series 2020 in an aggregate principal amount not to exceed \$8,492,000, related to Tax Increment Financing District 2017-1 (The Chamberlain).

Staff Report No. 22

2. Consideration of items, if any, removed from Consent Calendar

**RESOLUTIONS**

3. Consideration of a resolution approving a Contract for Private Development with 6345 Partners, LLC and authorizing the issuance of a Tax Increment Limited Revenue Note.

Staff Report No. 23

4. Consider the attached resolution approving a Preliminary Development Agreement between the Housing and Redevelopment Authority and PLH & Associates - Construction Services, LLC for redevelopment of property at 101 - 66th Street East.

Staff Report No. 24

**OTHER BUSINESS**

5. Consider the adoption of a resolution approving revisions to the Inclusionary Affordable Housing Policy.

Staff Report No. 25

6. Consider a request to purchase the property at 6701 17th Avenue South for \$412,000.

Staff Report No. 26

**HRA DISCUSSION ITEMS**

## EXECUTIVE DIRECTOR REPORT

### CLAIMS

#### 7. Adjournment

**Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.**



# HOUSING AND REDEVELOPMENT AUTHORITY MEETING MINUTES

Richfield, Minnesota

## Regular Meeting

### June 15, 2020

#### CALL TO ORDER

The meeting was called to order by Chair Supple at 7:03 p.m. via Webex.

*HRA Members Present:* Mary Supple, Chair; Sue Sandahl; Maria Regan Gonzalez; Pat Elliott and Erin Vrieze Daniels.

*HRA Members Absent:* None.

*Staff Present:* John Stark, Executive Director; Julie Urban, Housing Manager; and LaTonia DuBois, Administrative Assistant.

*Others Present:* Sarah Harris, Aeon Season’s Park; Dustin Endres, Endres Custom Homes.

#### OPEN FORUM

No speakers

#### APPROVAL OF THE MINUTES

M/Regan Gonzalez, S/Vrieze Daniels to approve the minutes of the regular Housing and Redevelopment Authority meeting of May 18, 2020.

Motion carried 5-0

<b>Item #1</b>	<b>APPROVAL OF THE AGENDA</b>
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M/Vrieze Daniels, S/Regan Gonzalez to approve the agenda.

Motion carried 5-0

<b>Item #2</b>	<b>APPROVAL OF THE CONSENT CALENDAR</b>
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Executive Director Stark presented the consent calendar.

- A. Consider adoption of a change to the Richfield Housing and Redevelopment Authority Administrative plan to conduct biennial inspections for units under the Section 8 Housing Choice Voucher Program. (S.R. No. 18)

M/Sandahl, S/Regan Gonzalez to approve the consent calendar.

Motion Carried 5-0

<b>Item #3</b>	<b>CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM THE CONSENT CALENDAR</b>
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None.

<b>Item #4</b>	<b>CONSIDERATION OF AN AMENDMENT TO THE GUIDELINES FOR THE APARTMENT IMPROVEMENT GRANT PROGRAM TO ALLOW DUPLEXES AS ELIGIBLE PROPERTIES. (S.R. NO. 19)</b>
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Housing Manager Urban presented Staff Report No.19 and explained grant funds are intended to be used for rental property participating in the Housing Choice Voucher Program.

Commissioner Vrieze Daniels inquired about triplexes participating in the City of Richfield.

Housing Manager Urban explained that there are only two or three triplexes in the City, but none of them participate in the Housing Choice Voucher Program.

M/Vrieze Daniels, S/Sandahl to approve an amendment to the guidelines for the Apartment Improvement Grant Program to allow duplexes as eligible properties.

Motion Carried 5-0

<b>Item #5</b>	<b>CONSIDERATION OF A MASTER AMENDMENT TO THE MORTGAGE, PROMISORY NOTE, AND LOAN AGREEMENT WITH AEON SEASONS PARK AND SUBORDINATION OF THE MORTGAGE. (S.R. NO. 20)</b>
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Housing Manager Urban presented Staff Report No. 20

Chair Supple commented that it is good financing has been found to make some improvements at Seasons Park.

Commissioner Regan Gonzalez echoed appreciation for improvements.

Commissioner Elliott also inquired about interest and payments on the original loan and discussed letting the public know the HRA does good things with funds.

Housing Manager Urban explained terms of the loan and that re-payment is not expected.

Executive Director Stark explained that re-payment is not expected.

RESOLUTION NO. 1362

RESOLUTION APPROVING A MASTER AMENDMENT AGREEMENT WITH AEON SEASONS PARK LLC RELATED TO AN AFFORDABLE HOUSING PROJECT IN THE CITY OF RICHFIELD

M/Regan Gonzalez, S/Elliott to approve a resolution authorizing the execution of a Master Amendment, promissory note and loan Agreement with Aeon Seasons Park and approve a subordination of the mortgage to the Minnesota Housing principal mortgage.

Motion Carried 5-0

<p><b>Item #6</b></p>	<p><b>CONSIDERATION OF A REQUEST TO CONTRIBUTE TO THE COST OF THE REMEDIATION OF HAZARDOUS MATERIALS AT 6812 EMERSON LANE. (S.R. NO. 21)</b></p>
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Housing Manager Urban presented Staff Report No. 21 and spoke of previous developments that discovered debris or hazardous materials and assistance that was provided. Housing Manager Urban also spoke of extensive costs for building in the area and how the lots were not buildable.

Housing Manager Urban mentioned a letter from Mr. Endres that offers details about the debris that was found and asked commissioners if they had a chance to review it. Commissioners did review the letter from Mr. Endres.

Commissioner Vrieze Daniels inquired about where the funds would come from.

Housing manager Urban explained the funds would come from the HRA general fund.

Chair Supple invited Mr. Endres to speak.

Mr. Endres explained how the debris was discovered and what the process was to haul it out and the reasoning for opening the trenches and removing all of the debris so the road wouldn't fail and the unexpected high expenses incurred.

Commissioner Sandahl inquired about sales and asked Mr. Endres to comment on the suggestion from staff that the HRA pay half of the expenses incurred opposed to the full amount.

M/Regan Gonzalez, S/Sandahl to authorize the Housing and Redevelopment Authority attorney to prepare an amendment to the Contract for Private Development with Endres Custom Homes, authorizing the Housing and Redevelopment Authority to provide \$7,500 for debris removal in the development of the property at 6812 Emerson Lane.

Commissioner Vrieze Daniels mentioned while this is unfortunate and expensive the land was sold to Mr. Endres for \$1 because of the high development costs required and that the note stated unexpected costs could come up and she would be voting no.

Commissioner Sandahl stated that she would consider approving up to \$10,000 if two other commissioners agreed.

Motion Carried 4-1, with Commissioner Vrieze Daniels voting nay.

<b>Item #7</b>	<b>HRA DISCUSSION ITEMS</b>
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Commissioner Sandahl inquired about the wooden structure on 66th and Lyndale Avenue.

Executive Director Stark explained the structure was intended to be temporary and was intended to prevent over parking and to send a message that the area was intended for future development. Chase Bank has since purchased the property and will begin development on the site soon.

Chair Supple announced the vacancy on the Planning Commission and encouraged residents to apply.

Commissioner Vrieze Daniels spoke of her history on the Planning Commission and encouraged residents to apply.

Commissioner Regan Gonzalez inquired about being able to tour some of the new developments.

Executive Director Stark stated that staff would absolutely reach out to developers about tours for Policy Makers.

Chair Supple inquired about the Eviction Moratorium.

Housing Manger Urban stated the Moratorium was extended and mentioned the Federal Eviction Suspension.

Commissioner Vrieze Daniels inquired about what the need would be once the moratorium expires.

Urban mentioned results from a survey sent to property owners and stated the percentage of those not paying rent wasn't as high as expected, but it is unknown what the need will be at this time.

<b>Item #8</b>	<b>EXECUTIVE DIRECTOR REPORT</b>
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Executive Director Stark mentioned that a grant approval at the sub-committee level of the Metropolitan Council was received and asked Housing Manager to Urban to elaborate.

Housing Manager Urban explained the grant is for the 6501 Penn Avenue, Bumper to Bumper, development site and predevelopment livable communities funding was recommended by the Community Development Committee and nice things were said about the project.

<b>Item #9</b>	<b>CLAIMS</b>
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M/Regan Gonzalez, S/Sandahl that the following claims be approved:

<b>U.S. BANK</b>	<b>6/15/2020</b>
Section 8 Checks 131778-131939	\$177,353.45
HRA Checks 33838-33845	\$44,993.58
<b>Total</b>	<b>\$222,347.03</b>

Motion carried 5-0

<b>Item #10</b>	<b>ADJOURNMENT</b>
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The meeting was adjourned by unanimous consent at 7:46 p.m.

Date Approved: July 20, 2020

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Mary B. Supple  
HRA Chair

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LaTonia DuBois  
Administrative Assistant

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John Stark  
Executive Director



**STAFF REPORT NO. 22**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/20/2020**

REPORT PREPARED BY: Myrt Link, Community Development Accountant  
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
7/10/2020

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the adoption of a resolution approving the issuance of, and providing the form, term, covenants and directions for the issuance of its Tax Increment Financing Limited Revenue Note, Series 2020 in an aggregate principal amount not to exceed \$8,492,000, related to Tax Increment Financing District 2017-1 (The Chamberlain).**

**EXECUTIVE SUMMARY:**

The Housing and Redevelopment Authority (HRA) approved the establishment of the 2017-1 Tax Increment Financing District and adoption of a Tax Increment Financing Plan on November 20, 2017. On June 18, 2018, the HRA entered into a Contract for Private Redevelopment (Contract) with Chamberlain Apartments, LLC (Developer) to construct a multifamily housing development.

The HRA is authorized to issue and sell its bonds for the purpose of financing a portion of the public development costs (qualified costs) of the Housing District. The HRA finds and determines that it is in the best interest of the Authority that it issue and sell its Tax Increment Limited Revenue Note, Series 2020 in the amount of up to \$8,492,000 with an annual interest rate of 4.6% for the purpose of reimbursing the Developer for qualified costs identified in the Tax Increment Plan for the 2017-1 Tax Increment District.

**RECOMMENDED ACTION:**

**By motion: Adopt a resolution approving the issuance of, and providing the form, term, covenants and directions for the issuance of its Tax Increment Financing Limited Revenue Note, Series 2020 in an aggregate principal amount not to exceed \$8,492,000, related to Tax Increment Financing District 2017-1 (The Chamberlain).**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- On November 20, 2017 the HRA established the 2017-1 Tax Increment Financing District and adopted a Tax Increment Financing Plan.
- The HRA enter into a Contract for Private Redevelopment with Chamberlain Apartments, LLC on June 18, 2018.
- Sale of HRA property to Chamberlain Apartments, LLC closed on July 11, 2018.
- In August 2018 construction started on 283 apartment units, rehabilitation of three 11-unit apartment buildings and underground parking.
- Qualified costs were received in May 2020.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**



- Per Minnesota Statutes, Section 469.178, the HRA is authorized to issue and sell its bonds for the purpose of financing a portion of the public development costs of the Housing District.
- Pursuant to the Contract for Private Development (approved by the HRA on June 18, 2018), the HRA committed itself to issue this TIF Note if all contract provisions were met by the developer.

**C. CRITICAL TIMING ISSUES:**

- The Note needs to be issued prior to August 1, 2020, when the first payment is scheduled to be made.

**D. FINANCIAL IMPACT:**

- The payments on Tax Increment Limited Revenue Note, Series 2020 will be made from available tax increment and will only be made subject to sufficient increment being generated on the property to meet the payment obligations.
- As this is a "Pay-As-You-Go" Note, the developer will only receive Tax Increment payments to the extent that the property taxes support the payment; the HRA is under no obligation to make the TIF Note payments in the event that the property taxes collected are insufficient.

**E. LEGAL CONSIDERATION:**

- The resolution and Tax Increment Limited Revenue Note, Series 2020 were drafted by HRA legal counsel.

**ALTERNATIVE RECOMMENDATION(S):**

None

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

N/A

**ATTACHMENTS:**

Description	Type
☐ Resolution	Resolution Letter

**HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE  
CITY OF RICHFIELD, MINNESOTA**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE ISSUANCE OF, AND  
PROVIDING THE FORM, TERMS, COVENANTS AND  
DIRECTIONS FOR THE ISSUANCE OF ITS TAX INCREMENT  
LIMITED REVENUE NOTE, SERIES 2020 IN AN AGGREGATE  
PRINCIPAL AMOUNT NOT TO EXCEED \$8,492,000**

BE IT RESOLVED BY the Board of Commissioners (“Board”) of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”), as follows:

Section 1. Authorization; Award of Sale.

1.01. Authorization. The Authority has heretofore approved the establishment of Tax Increment Financing District No. 2017-1 (The Chamberlain) (a housing district) (the “TIF District”) within the Richfield Redevelopment Project (“Redevelopment Project”), and has adopted a tax increment financing plan for the purpose of financing certain improvements within the Redevelopment Project.

Pursuant to Minnesota Statutes, Section 469.178, the Authority is authorized to issue and sell its bonds for the purpose of financing a portion of the public development costs of the Redevelopment District. Such bonds are payable from all or any portion of revenues derived from the TIF District and pledged to the payment of the bonds. The Authority hereby finds and determines that it is in the best interests of the Authority that it issue and sell its Tax Increment Limited Revenue Note, Series 2020 (the “TIF Note”), in the aggregate principal amount of up to \$8,492,000 for the purpose of financing certain public redevelopment costs of the Tax Increment Plan for the TIF District.

1.02. Issuance, Sale and Terms of the TIF Note. The Authority entered into an Amended and Restated Contract for Private Development, dated June 18, 2018 (the “Agreement”), between the Authority and the Owner. Pursuant to the Agreement, the TIF Note shall be sold to Chamberlain Apartments, LLC (the “Owner”). The TIF Note shall be dated as of the date of delivery and shall bear interest at the rate of 4.6% per annum to the earlier of maturity or prepayment. In exchange for the Authority’s issuance of the TIF Note to the Owner, the Owner shall pay certain public redevelopment costs related to the Minimum Improvements (as defined in the Agreement) pursuant to Section 3.3 of the Agreement. The TIF Note will be delivered in the principal amount of up to \$8,492,000 for reimbursement of public redevelopment costs in accordance with the terms of Section 3.4(a) of the Agreement.

Section 2. Form of TIF Note. The TIF Note shall be in substantially the form set forth in Schedule A attached hereto, with the blanks to be properly filled in and the principal amount and payment schedule adjusted as of the date of issue.

Section 3. Terms, Execution and Delivery.

3.01. Denomination, Payment. The TIF Note shall be issued as a single typewritten note numbered R-1.

The TIF Note shall be issuable only in fully registered form. Principal of and interest on the TIF Note shall be payable by check or draft issued by the Registrar described herein.

3.02. Dates; Interest Payment Dates. Subjection to the provisions of the Agreement, principal of and interest on the TIF Note shall be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date, whether or not such day is a business day.

3.03. Registration. The Authority hereby appoints the Authority's Executive Director to perform the functions of registrar, transfer agent and paying agent (the "Registrar"). The effect of registration and the rights and duties of the Authority and the Registrar with respect thereto shall be as follows:

(a) Register. The Registrar shall keep at its office a bond register in which the Registrar shall provide for the registration of ownership of the TIF Note and the registration of transfers and exchanges of the TIF Note.

(b) Transfer of TIF Note. Upon surrender for transfer of the TIF Note, including any assignment or exchange thereof, duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, and the payment by the Owner of any tax, fee, or governmental charge required to be paid by or to the Authority with respect to such transfer or exchange, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates. Notwithstanding the foregoing, the TIF Note shall not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Owner or a certificate of the transferor, in a form satisfactory to the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

The TIF Note shall not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter in EXHIBIT C of the Agreement or a certificate of the transferor, in a form satisfactory to the Executive Director of the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

The Owner may assign the TIF Note to a lender that provides all or part of the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. The Authority hereby consents to such assignment, conditioned upon receipt of an investment letter from such lender in substantially the form attached in the Agreement as EXHIBIT C, or other form reasonably acceptable to the Executive Director of the Authority. The Authority also agrees that future assignments of the TIF Note may be approved by the Executive Director of the Authority without action of the Authority's Board, upon the receipt of an investment letter in substantially the form of EXHIBIT C of the Agreement or other investment letter reasonably acceptable to the Authority from such assignees.

(c) Cancellation. The TIF Note surrendered upon any transfer shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the Authority.

(d) Improper or Unauthorized Transfer. When a Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Note or separate

instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(e) Persons Deemed Owners. The Authority and the Registrar may treat the person in whose name a Note is at any time registered in the bond register as the absolute owner of the TIF Note, whether the TIF Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such Note to the extent of the sum or sums so paid.

(f) Taxes, Fees and Charges. For every transfer or exchange of a Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.

(g) Mutilated, Lost, Stolen or Destroyed Note. In case any Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated Note or in lieu of and in substitution for such Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Note prior to payment.

3.04. Preparation and Delivery. The TIF Note shall be prepared under the direction of the Executive Director of the Authority and shall be executed on behalf of the Authority by the signatures of its Chair and its Executive Director. In case any officer whose signature shall appear on the TIF Note shall cease to be such officer before the delivery of the TIF Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the TIF Note has been so executed, the TIF Note shall be delivered by the Authority to the Owner following the delivery of the necessary items delineated in Section 3.3 of the Agreement.

#### Section 4. Security Provisions.

4.01. Pledge. The Authority hereby pledges to the payment of the principal of and interest on the TIF Note Available Tax Increment as defined in the TIF Note. Available Tax Increment shall be applied to payment of the principal of and interest on the TIF Note in accordance with Section 3.3 of the Agreement and the terms of the form of TIF Note set forth in Schedule A attached to this resolution.

4.02. Bond Fund. Until the date the TIF Note is no longer outstanding and no principal thereof or interest thereon (to the extent required to be paid pursuant to this resolution) remains unpaid, the Authority shall maintain a separate and special "Bond Fund" to be used for no purpose other than the payment of the principal of and interest on the TIF Note. The Authority irrevocably agrees to appropriate to the Bond Fund in each year Available Tax Increment. Any Available Tax Increment remaining in the Bond Fund shall be transferred to the Authority's account for TIF District upon the payment of all principal and interest to be paid with respect to the TIF Note.

#### Section 5. Certification of Proceedings.

5.01. Certification of Proceedings. The officers of the Authority are hereby authorized and directed to prepare and furnish to the Owner of the TIF Note certified copies of all proceedings and records of the Authority, and such other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the TIF Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the Authority as to the facts recited therein.

Section 6. Effective Date. This resolution shall be effective upon full execution of the Agreement.

Adopted by the Board of Commissioner the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, this 20<sup>th</sup> day of July, 2020.

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Chair

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Executive Director

**EXHIBIT A**  
**FORM OF TIF NOTE**

UNITED STATE OF AMERICA  
STATE OF MINNESOTA  
COUNTIES OF HENNEPIN  
HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE  
CITY OF RICHFIELD

No. R-1

\$8,492,000

TAX INCREMENT LIMITED REVENUE NOTE  
SERIES 2020

Rate

Date  
of Original Issue

[lesser of 4.6% or actual financing rate]

May 14, 2020

The Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”), for value received, certifies that it is indebted and hereby promises to pay to Chamberlain Apartments, LLC, or registered assigns (the “Owner”), the principal sum of \$8,492,000 and to pay interest thereon at the rate of six and three quarters percent per annum, as and to the extent set forth herein.

1. Payments. Principal and interest (“Payments”) shall be paid on August 1, 2020, and each February 1 and August 1 (each a “Payment Date”) and thereafter to and including February 1, 2046, in the amounts and from the sources set forth in Section 3 herein. Payments shall be applied first to accrued interest, and then to unpaid principal.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon 30 days written notice to the Authority. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Interest at the rate stated herein shall accrue on the unpaid principal, commencing on the date of original issue. Interest shall accrue on a simple basis and will not be added to principal. Interest shall be computed on the basis of a year of 360 days and charged for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from “Available Tax Increment,” which will mean, on each Payment Date, ninety percent (90%) of the Tax Increment (as defined in the Agreement) attributable to the Development Property (as defined in the Agreement) and paid to the Authority by Hennepin County in the six months preceding the Payment Date, all as the terms are defined in the Amended and Restated Contract for Private Development, dated June 18, 2018 (the “Agreement”), between the Authority and Owner. The principal of and interest on this Note shall be payable each Payment Date solely from Available Tax Increment. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement.

The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of Available Tax Increment. The Authority shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the payment of Available Tax Increment from the last payment of Tax Increment the Authority is entitled to receive from Hennepin County with respect to the Development Property.

4. Optional Prepayment. The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Note.

5. Termination. At the Authority's option, this Note shall terminate and the Authority's obligation to make any payments under this Note shall be discharged upon the occurrence of an Event of Default on the part of the Developer as defined in Section 9.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 9.2 of the Agreement.

6. Nature of Obligation. This Note is issued to aid in financing certain public development costs and administrative costs of a housing project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Authority on July 20, 2020, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely.

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

8. Registration. This Note is issuable only as a fully registered note without coupons.

9. Transfer. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the City Clerk of the City of Richfield. Upon surrender for transfer of the TIF Note, including any assignment or exchange thereof, duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, and the payment by the Owner of any tax, fee, or governmental charge required to be paid by or to the Authority with respect to such transfer or exchange, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new

Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.



Notwithstanding the foregoing, the TIF Note shall not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter in EXHIBIT C of the Agreement or a certificate of the transferor, in a form satisfactory to the Executive Director of the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

The Owner may assign the TIF Note to a lender that provides all or part of the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. The Authority hereby consents to such assignment, conditioned upon receipt of an investment letter from such lender in substantially the form attached in the Agreement as EXHIBIT C, or other form reasonably acceptable to the Executive Director of the Authority. The Authority also agrees that future assignments of the TIF Note may be approved by the Executive Director of the Authority without action of the Authority's Board, upon the receipt of an investment letter in substantially the form of EXHIBIT C of the Agreement or other investment letter reasonably acceptable to the Authority from such assignees.

This Note is issued pursuant to a resolution of the Board of the Authority and is entitled to the benefits thereof, which Resolution is incorporated herein by reference.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, has caused this Note to be executed with the manual signatures of its Chair and Executive Director, all as of the Date of Original Issue specified above.

**HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RICHFIELD, MINNESOTA**

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Chair

**REGISTRATION PROVISIONS**

The ownership of the unpaid balance of the within Note is registered in the bond register of the Authority's Executive Director, in the name of the person last listed below.

Date of Registration

Registered Owner

Signature of Executive Director

CHAMBERLAIN  
APARTMENTS, LLC  
Federal ID # \_\_\_\_\_



**STAFF REPORT NO. 23**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/20/2020**

REPORT PREPARED BY: John Stark, Executive Director  
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
7/15/2020

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of a resolution approving a Contract for Private Development with 6345 Partners, LLC and authorizing the issuance of a Tax Increment Limited Revenue Note.**

**EXECUTIVE SUMMARY:**

On November 26, 2019, NorthBay Companies (Developer) presented a redevelopment concept at 65th Street and Lyndale Avenue to a combined work session of the Richfield Housing and Redevelopment Authority (HRA), Planning Commission and City Council. The proposal called for the rehabilitation of the existing 22-unit apartment building located at 6345 Lyndale Avenue South along with construction of a new apartment building to the east. The existing apartment building is considered to be "naturally occurring affordable housing (NOAH)."

Based on the positive feedback at the work session, the HRA approved a Preliminary Development Agreement with NorthBay on January 21, 2020. The primary purpose of that Preliminary Agreement was for the Developer to determine the financial viability of their proposal and for HRA staff and financial consultants (Ehlers) to quantify the potential public assistance available to cover any cost "gap" that the Developer's feasibility analysis identified. The original Preliminary Agreement was subsequently extended due to the impact of the Coronavirus pandemic.

Since the Preliminary Agreement was approved by the HRA in January, the Developer has pursued Planning and Zoning approvals that would be necessary for the development to occur. These efforts have included:

- A neighborhood meeting was held on February 27. As a result of neighbor input, the easternmost portion of the building was reduced to 4 stories, the unit count was reduced by 8 units in an effort to increase the number of available parking spaces per unit.
- The Planning Commission held a Public Hearing on May 27, 2020 to consider land use changes to the site. While a majority of the site (existing apartment building and three duplexes) has been properly zoned for higher intensity multi-family housing since 2014, one of the single-family homes to be acquired for the project was still zoned for single-family residential. Ultimately a rezoning to "Planned Mixed Use" was sought by the Developer to accommodate the density they were proposing. While the Planning Commission had concerns about the parking and recommended that a stricter parking ratio be achieved, they did recommend the overall approval of the development with that caveat.
- After the Planning Commission meeting, the development team was able to add an additional four parking spaces by reconfiguring the parking lot.
- The City Council approved the rezoning and other land use applications for the site on July 14, 2020.

As both the Developer and the HRA have now met all of the obligations of the Preliminary Development

Agreement, HRA consideration of a Contract for Private Development (Contract) is now being sought. This Contract was drafted by HRA Legal Counsel (Julie Eddington of Kennedy and Graven) and has been reviewed and edited by both HRA staff and the Developer. Among the provisions of the Contract are:

- The Developer will make improvements totaling at least \$18.5 million to include construction of a new 4-to-5 story 82-unit apartment building and rehabilitation of the existing 22-unit NOAH apartment building;
- The Developer will pay and/or reimburse the HRA's up-front costs to create this Agreement, to establish a Tax Increment Financing (TIF) District and other Administrative costs.
- At least 20% of the units (including 5 in the new building) must be made to be affordable to households with incomes of 50% or lower than the Area Median Income (AMI) for the life of the TIF District (projected to be 26 years, but possibly as short as 12 years). This level of affordability meets both the HRA and City's Inclusionary Housing Policy and the State's requirements for a Housing TIF District.
- The HRA would withhold the first 10% of Tax Increment for reimbursement of its ongoing administrative costs and the Developer would receive the remainder of the TIF generated to reimburse them for costs incurred to allow their development to achieve the affordability requirements;
- The maximum TIF that would be available to the Developer is \$2,025,987. Staff and the HRA's Financial have concluded that the development could not occur "But For" this level of assistance.
- As a reminder, in a TIF District, the property owner continues to pay taxes on the pre-redevelopment property values to all of the taxing jurisdictions (City, County & School District) as had been the case prior to the establishment of a TIF District. The property owner also pays normal property taxes on the value of the new construction; 90% of these "new" taxes can be returned to the developer to reimburse them for costs necessary to make the project financially feasible while still meeting affordability requirements.
- The Developer chose to buy an additional property (514 64th Street West) in order to increase their surface parking area and to provide a park access from 65th Street to Garfield Park. This was done, in part, at the request of the City's Recreation Services Department as they believe providing this access makes the park more usable and more safe.
- A number of new provisions have been added to this Contract in order to help combat unfair labor practices. These provisions include:
  - Construction and ongoing operation of the project must comply with all local, state and federal labor laws.
  - The Certificate of Completion will be provided upon evidence that all contractors, subcontractors and laborers have been paid.
  - If the Developer fails to comply with labor laws, they will be in default of the Contract.
  - If they are in default, the HRA can delay issuance of the tax increment, reduce the amount of the TIF by 20%, or terminate the Contract.

### **RECOMMENDED ACTION:**

**By motion: Approve a resolution approving a Contract for Private Development with 6345 Partners, LLC and authorizing the issuance of a Tax Increment Limited Revenue Note.**

### **BASIS OF RECOMMENDATION:**

#### **A. HISTORICAL CONTEXT**

- On November 26, 2019, NorthBay Companies (the Developer) presented a redevelopment concept at 65th Street and Lyndale Avenue to a combined Work Session of the Richfield Housing and Redevelopment Authority (HRA), Planning Commission and City Council for the construction of a new 5-story multi-family housing development and the rehabilitation of the existing adjoining 22-unit apartment building.
- The HRA approved a Preliminary Development Agreement with NorthBay on January 21, 2020.
- The HRA took subsequent actions to extend the term of this Preliminary Development Agreement due to the impact of COVID-19.
- NorthBay held a neighborhood meeting on February 27.
- The Planning Commission held a Public Hearing to consider a number of land-use requests for the property on May 27 and recommended a City Council approval with a requested parking modification. The City Council approved a first reading of land-use approvals on June 9 and held a 2nd reading on July 14 at which the Comprehensive Plan designation was amended,

the property was rezoned and a Plat was approved.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The Preliminary Development Agreement between the Developer and the HRA was originally approved by the HRA on January 21. That Agreement states that "the parties [the HRA and the Developer] will attempt in good faith to negotiate the terms of a contract for private development..."

**C. CRITICAL TIMING ISSUES:**

- With the extensions enacted in response to the impacts of the Coronavirus pandemic, the current Preliminary Agreement is set to expire no later than October 31, 2020.

**D. FINANCIAL IMPACT:**

- The Contract calls for the Developer to receive up to \$2,025,987 in Tax Increment Financing (TIF).
- That TIF would be provided in the form of a "Pay-As-You-Go" Note and would not pose a financial risk to the HRA (the risk would be to the Developer if the property failed to pay adequate property taxes).
- The development property would continue to pay property taxes to all of the current taxing jurisdictions (City, County and School District) on the "base value" of the property.
- The Developer would be obligated to reimburse the HRA for legal and financial costs associated with drafting this Contract and with evaluating and establishing a TIF District.

**E. LEGAL CONSIDERATION:**

- HRA Legal Counsel, Julie Eddington of Kennedy & Graven, drafted the original version of this Contract and has agreed to some of the edits requested by the Developer and their legal counsel.

**ALTERNATIVE RECOMMENDATION(S):**

- Defer a decision on this item in order to seek clarification on any outstanding questions or issues;
- Do not approve this Contract.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Representatives of NorthBay Development.

**ATTACHMENTS:**

Description	Type
☐ Resolution	Resolution Letter
☐ Contract for Development	Contract/Agreement

**HOUSING AND REDEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING CONTRACT FOR PRIVATE  
DEVELOPMENT WITH 6345 PARTNERS, LLC AND AUTHORIZING  
THE ISSUANCE OF A TAX INCREMENT LIMITED REVENUE NOTE**

WHEREAS, the City of Richfield, Minnesota (the “City”) and the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) intends to approve the creation of the 2020-1 Tax Increment Financing District - Henley II (the “TIF District”), a housing district, within the Richfield Redevelopment Project in the City (the “Redevelopment Project”) and will consider adopting a tax increment financing plan for the purpose of financing certain improvements within the Redevelopment Project on August 17, 2020; and

WHEREAS, 6345 Partners, LLC, a Minnesota limited liability company (the “Developer”), intends to construct on certain property within the TIF District (the “Development Property”) an approximately 82-unit multifamily housing development, including an accessible two-bedroom unit at ground level (the “New Housing Development”); and

WHEREAS, in addition to the New Housing Development described above, the Developer intends to purchase a 22-unit apartment building with naturally occurring affordable rents located on the Development Property (the “NOAH Housing Development”) and rehabilitate the existing building without displacing the NOAH Housing Development’s current tenants (other than a temporary displacement during rehabilitation of each unit, if necessary); and

WHEREAS, there has been presented before this Board of Commissioners of the Authority (the “Board”) a Contract for Private Development (the “Development Agreement”) proposed to be entered into between the Authority and the Developer, pursuant to which the Developer will agree to construct the New Housing Development and rehabilitate the NOAH Housing Development (together, the “Minimum Improvements”) and the Authority will agree to reimburse the Developer for certain public redevelopment costs associated with the Minimum Improvements (the “Public Redevelopment Costs”); and

WHEREAS, pursuant to Minnesota Statutes, Section 469.178, the Authority is authorized to issue and sell its bonds for the purpose of financing a portion of the Public Redevelopment Costs, and such bonds shall be payable from all or any portion of revenues derived from the TIF District and pledged to the payment of the bonds; and

WHEREAS, pursuant to the Development Agreement, the Authority has proposed to issue a Tax Increment Limited Revenue Note to the Developer (the “TIF Note”) in the maximum principal amount of \$2,025,987 to reimburse the Developer for the Public Redevelopment Costs; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota as follows:

Section 1.       The Development Agreement.

1.01. Upon completion of the Rehabilitation Plan by the Developer, the Executive Director shall review the Rehabilitation Plan, request changes if necessary, and approve the final Rehabilitation Plan. Upon final approval the Rehabilitation Plan will be attached to the Development Agreement as Exhibit F.

1.02. The Development Agreement is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Development Agreement for and on behalf of the Authority in substantially the form now on file with the Executive Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

Section 2.        The TIF Note.

2.01. The Authority hereby approves and authorizes the Chair and Executive Director to execute the TIF Note. The TIF Note shall be sold to the Developer with such terms provided in the Development Agreement. The Authority hereby delegates to the Executive Director the determination of the date on which the TIF Note is to be delivered, in accordance with Section 3.3 of the Development Agreement. The Authority shall receive in exchange for the sale of the TIF Note the agreement of the Developer to pay or cause to be paid the Public Redevelopment Costs.

2.02. The TIF Note shall be in substantially the form set forth in Exhibit B attached to the Development Agreement, with the blanks to be properly filled in and the principal amount and payment schedule adjusted as of the date of issue.

2.03. The TIF Note shall be issued as a single typewritten note numbered R-1. The TIF Note shall be issuable only in fully registered form. Principal of the TIF Note shall be payable by check or draft issued by the registrar described herein. Principal of the TIF Note shall be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date (as defined in the Development Agreement), whether or not such day is a business day.

2.04. The Authority hereby appoints the Executive Director of the Authority to perform the functions of registrar, transfer agent and paying agent (the "Registrar") for the TIF Note. The effect of registration and the rights and duties of the Authority and the Registrar with respect thereto shall be as follows:

(a) The Registrar shall keep at its office a bond register in which the Registrar shall provide for the registration of ownership of the TIF Note and the registration of transfers and exchanges of the TIF Note.

(b) Upon surrender for transfer of the TIF Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new TIF Note or Notes of a like aggregate principal amount and maturity, as requested by the transferor. Notwithstanding the foregoing, the TIF Note shall not be transferred to any person other than an affiliate, or other related entity, of the Developer unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Developer or a certificate of the transferor, in a form satisfactory to the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

(c) Any TIF Note surrendered upon any transfer shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the Authority.

(d) If the TIF Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such TIF Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(e) The Authority and the Registrar may treat the person in whose name the TIF Note is at any time registered in the bond register as the absolute owner of such TIF Note, whether the TIF Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of such TIF Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such TIF Note to the extent of the sum or sums so paid.

(f) For every transfer or exchange of the TIF Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.

(g) In case the TIF Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new TIF Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated TIF Note or in lieu of and in substitution for such TIF Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such TIF Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed TIF Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new TIF Note prior to payment.

2.05. The TIF Note shall be prepared under the direction of the Executive Director and shall be executed on behalf of the Authority by the signatures of its Chair and Executive Director. In case any officer whose signature shall appear on the TIF Note shall cease to be such officer before the delivery of the TIF Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the TIF Note has been so executed, it shall be delivered by the Executive Director to the Developer in accordance with the Development Agreement.

### Section 3. Security Provisions of the TIF Note.

3.01. The Authority hereby pledges to the payment of the principal of the TIF Note all Available Tax Increment (as defined in the Development Agreement and as further described in the TIF Note). Available Tax Increment shall be applied to payment of the principal of the TIF Note in accordance with the terms of Development Agreement and the form of TIF Note.

3.02. Until the date the TIF Note is no longer outstanding and no principal thereof (to the extent required to be paid pursuant to this resolution) remains unpaid, the Authority shall maintain a separate and special "Bond Fund" for the TIF Note to be used for no purpose other than the payment of the principal of the TIF Note. The Authority irrevocably agrees to appropriate to the Bond Fund in each year Available Tax Increment, subject to the terms of the Development Agreement. Any Available Tax Increment remaining in



either Bond Fund shall be transferred to the Authority's account for the TIF District upon the payment of all principal to be paid with respect to the TIF Note.

Section 4. Miscellaneous.

4.01. The Chair and the Executive Director are hereby authorized to execute and deliver to the Developer any and all documents deemed necessary to carry out the intentions of this resolution and the Development Agreement.

4.02. The officers of the Authority are hereby authorized and directed to prepare and furnish to the Developer certified copies of all proceedings and records of the Authority, and such other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the TIF Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the Authority as to the facts recited therein.

4.03. The approval of the Development Agreement is contingent upon the City and Authority approving the establishment of the TIF District and the related documents.

4.04. This resolution shall be effective upon full execution of the Development Agreement.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20<sup>th</sup> day of July, 2020.

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Mary B. Supple, Chair

ATTEST:

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Maria Regan Gonzalez, Secretary

**Fifth Draft  
July 15, 2020**

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**CONTRACT  
FOR  
PRIVATE DEVELOPMENT**

**between**

**HOUSING AND REDEVELOPMENT AUTHORITY IN AND  
FOR THE CITY OF RICHFIELD, MINNESOTA**

**and**

**6345 PARTNERS, LLC**

**Dated \_\_\_\_\_, 2020**

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This document was drafted by:  
KENNEDY & GRAVEN, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
Telephone: 612-337-9300

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## CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “Agreement”), is between the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and 6345 PARTNERS, LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”), and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Richfield, Minnesota (the “City”); and

WHEREAS, the Authority has undertaken a program to promote redevelopment and development of land that is underused or underutilized within the City, and in this connection the Authority administers a redevelopment project known as the Richfield Redevelopment Project (the “Redevelopment Project”) pursuant to the HRA Act; and

WHEREAS, pursuant to the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise and promote the development of affordable housing within the City; and

WHEREAS, within the Redevelopment Project, the Authority has created the 2020-1 Tax Increment Financing District - Henley II (the “TIF District”), a housing district, in order to facilitate redevelopment of certain property in the Redevelopment Project and promote the development of affordable housing within the City; and

WHEREAS, the Developer has executed purchase agreements to purchase certain property (the “Development Property”) within the TIF District and intends to construct on a portion thereof an approximately 82-unit multifamily housing development, including an accessible two-bedroom unit at ground level (the “New Housing Development”); and

WHEREAS, in addition to New Housing Development described above, the Developer intends to purchase a 22-unit apartment building with naturally occurring affordable rents located on remaining portion of the Development Property (the “NOAH Housing Development”) and rehabilitate the existing building without displacing the NOAH Housing Development’s current tenants (other than a temporary displacement during rehabilitation of each unit, if necessary); and

WHEREAS, in order to achieve the objectives of the redevelopment plan for the Redevelopment Project and make the New Housing Development and the NOAH Housing Development economically feasible for the Developer to construct, the Authority is prepared to reimburse the Developer for a portion of certain site improvement costs and other costs related to the Minimum Improvements that may be reimbursed with tax increment; and

WHEREAS, the Authority believes that the development of the TIF District pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Redevelopment Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

(Remainder of this page intentionally left blank)

## ARTICLE I

### Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms have the following meanings:

“Agreement” means this Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Authority” means the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota.

“Authority Representative” means the Executive Director of the Authority.

“Available Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Development Property and paid to the Authority by the County in the six (6) months preceding the Payment Date after first deducting therefrom ten percent (10%) of the Tax Increment to be used to reimburse the Authority for administrative expenses. Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement that has not been waived by the Authority. Once the Event of Default is cured or waived by the Authority, withheld Tax Increment shall be Available Tax Increment.

“Board” means the Board of Commissioners of the Authority.

“Certificate of Completion” means the certification provided to the Developer pursuant to Section 4.5 hereof and set forth in EXHIBIT D.

“City” means the City of Richfield, Minnesota.

“City Council” means the City Council of the City.

“Construction Plans” means, with respect to the New Housing Development, the plans, specifications, drawings and related documents on the construction work to be performed by the Developer on the Development Property, including the New Housing Development, which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City; and (b) shall include at least the following: (1) site plan, (2) foundation plan, (3) floor plan for each floor, (4) cross-sections of each (length and width), (5) elevations (all sides, including a building materials schedule), (6) landscape and grading plan, and (7) such other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Hennepin County, Minnesota.

“Declaration of Restrictive Covenants” means the Declaration of Restrictive Covenants between the Authority and the Developer in substantially the form set forth in EXHIBIT E.

“Developer” means 6345 Partners, LLC, a Minnesota limited liability company, or its permitted successors and assigns.



“Development Property” means the real property described in EXHIBIT A.

“Event of Default” means an action by the Developer listed in Article IX hereof.

“Holder” means the owner of a Mortgage.

“HRA Act” means Minnesota Statutes, Sections 469.001 through 469.047, as amended.

“Material Change” means a change in construction plans that materially and adversely affects generation of tax increment or changes the number of units of rental housing.

“Maturity Date” means the earlier of the date that the TIF Note has been paid in full or terminated or the date the TIF District is decertified.

“Minimum Improvements” means the construction of New Housing Development on the Development Property and the rehabilitation of the NOAH Housing Development.

“Minimum Market Value” has the meaning set forth in Section 4.5 hereof.

“Mortgage” means any mortgage made by the Developer which is secured, in whole or in part, with the Development Property and which is a permitted encumbrance pursuant to the provisions of Article VII hereof.

“New Housing Development” means the construction of an approximately 82-unit multifamily housing development, including an accessible two-bedroom unit on ground level.

“NOAH Housing Development” a 22-unit apartment building with naturally occurring affordable rents located on the Development Property.

“Payment Date” means each February 1 and August 1 on which principal of and interest on the TIF Note is paid.

“Project Area” means the real property located within the boundaries of the Redevelopment Project.

“Preliminary Development Agreement” means the Preliminary Development Agreement, dated January 21, 2020, between the Authority and the Developer.

“Public Redevelopment Costs” means costs related to the development of the Minimum Improvements and eligible to be reimbursed with Tax Increment, including but not limited to the costs of property acquisition, site improvements, rehabilitation of the NOAH Housing Development, and the costs of the New Housing Development (to the extent authorized by the TIF Act).

“Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Project approved and adopted by the Board and the City Council.

“Rehabilitation Plan” means the detailed list of the rehabilitation the Developer shall complete with respect to the NOAH Housing Project set forth in EXHIBIT F.

“Redevelopment Project” means the Richfield Redevelopment Project.

“State” means the State of Minnesota.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the Authority as tax increment pursuant to the TIF Act.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

“TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“TIF District” means the 2020-1 Tax Increment Financing District - Henley II, a housing district within the Redevelopment Project.

“TIF Note” means the Tax Increment Limited Revenue Note, substantially in the form attached hereto as EXHIBIT B, to be delivered by the Authority to the Developer pursuant to Section 3.3(a) hereof.

“TIF Plan” means the Tax Increment Financing Plan for the TIF District, as approved by the City Council of the City on \_\_\_\_\_, 2020, as it may be amended and supplemented.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged or unusual adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in exercising its rights under this Agreement) which directly result in delays, acts of public enemies, wars, blockades, insurrections, riots, earthquakes, fires, floods, disasters, sabotage, regulatory changes, or other events or circumstances not within the reasonable control of a party preventing a party from performing its obligations, including, without limitation, diseases, public health emergencies, pandemics (e.g., COVID-19), endemics, travel bans, domestic or international restrictions on travel, or acts of governmental bodies (but not including governmental actions, orders, penalties, judgments, or requirements which such party could have prevented by compliance with applicable laws, regulations and standards).

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## ARTICLE II

### **Representations and Warranties**

Section 2.1. Representations by the Authority. The Authority makes the following representations as the basis for the undertaking on its part herein contained:

(a) The Authority is a housing and redevelopment authority organized and existing under the laws of the State. Under the provisions of the HRA Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder, and execution of this Agreement has been duly, properly and validly authorized by the Authority.

(b) The Authority proposes to assist in financing the Public Redevelopment Costs necessary to facilitate the construction of the Minimum Improvements in accordance with the terms of this Agreement to further the objectives of the Redevelopment Plan.

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, affordable, decent, safe, and sanitary housing in the City.

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

(f) No commissioner of the Board or officer of the Authority has either a direct or indirect financial interest in this Agreement, nor will any commissioner or officer benefit financially from this Agreement within the meaning of Section 469.009 of the HRA Act.

Section 2.2. Representations by the Developer. The Developer represents and warrants that:

(a) The Developer is a limited liability company duly organized and in good standing under the laws of the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Developer will construct, operate, and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Redevelopment Plan, and all local, State, and federal laws and regulations (including, but not limited to, environmental, zoning, building code, labor, and public health laws and regulations).

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer or the Authority in or on the Development Property may be or will

be in violation of any environmental law or regulation (other than those notices or communications of which the Authority is aware). The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State, or federal environmental law, regulation, or review procedure.

(d) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(e) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) The proposed development by the Developer hereunder would not occur but for the tax increment financing assistance being provided by the Authority hereunder.

(g) The Developer shall promptly advise the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting Developer or its business which may delay or require changes in construction of the Minimum Improvements.

(h) The Developer represents that no more than twenty percent (20%) of the square footage of each building comprising the Minimum Improvements will consist of commercial, retail or other nonresidential use.

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## ARTICLE III

### **Property Acquisition; Financing**

Section 3.1. Status of Development Property. The Developer has executed purchase agreements for the Development Property and will acquire the parcels comprising the Development Property. The Authority has no obligation to acquire the Development Property.

#### Section 3.2. Environmental Conditions.

(a) The Developer acknowledges that the Authority makes no representations or warranties as to the condition of the soils on the Development Property or the fitness of the Development Property for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property, and that the assistance provided to the Developer under this Agreement neither implies any responsibility by the Authority for any contamination of the Development Property nor imposes any obligation on such parties to participate in any cleanup of the Development Property.

(b) Without limiting its obligations under Section 8.3 hereof, the Developer further agrees that it will indemnify, defend, and hold harmless the Authority and its governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants existing on or in the Development Property, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the indemnitees. Nothing in this Section will be construed to limit or affect any limitations on liability of the Authority under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02, as amended.

#### Section 3.3. Issuance of Pay-As-You-Go TIF Note.

(a) To reimburse the Developer for certain Public Redevelopment Costs, the Authority shall issue and deliver and the Developer shall purchase the TIF Note in the principal amount of \$2,025,987 in substantially the form set forth in EXHIBIT B. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note shall consist of the Developer's payment of the Public Redevelopment Costs in at least the principal amount of the TIF Note.

The Authority shall deliver the TIF Note upon delivery by the Developer of an investment letter in substantially the form attached hereto as EXHIBIT C, together with evidence reasonably satisfactory to the Authority that the Developer has paid the Public Redevelopment Costs in at least the principal amount of the TIF Note. The principal of and interest on the TIF Note shall be payable each Payment Date solely with Available Tax Increment.

(b) The Developer understands and acknowledges that the Authority makes no representations or warranties regarding the amount of Available Tax Increment, or that revenues pledged to the TIF Note will be sufficient to pay the principal of and interest on the TIF Note. Any estimates of Tax Increment prepared by the Authority or its financial or municipal advisors in connection with the TIF District or this Agreement are for the benefit of the Authority and are not intended as representations on which the Developer may rely.

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides part of the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. Pursuant to the terms of the TIF Note, the TIF Note may be assigned if the assignee executes an investment letter in substantially the form set forth in EXHIBIT C.

Section 3.4. Termination of TIF District. At any time following the payment in full of the principal of and interest on TIF Note, the Authority may use the remaining Tax Increment for any other authorized uses set forth in the TIF Plan or may terminate the TIF District.

Section 3.5. Payment of Administrative Costs. Pursuant to the Preliminary Development Agreement, the Developer previously deposited with the Authority \$7,000 to pay Administrative Costs related to the Preliminary Development Agreement and will deposit with the Authority an additional \$15,000 to pay Administrative Costs. “Administrative Costs” are defined as out-of-pocket costs incurred by the Authority, together with staff and consultant costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of the Preliminary Development Agreement, this Agreement, the TIF Plan, and other documents and agreements in connection with the establishment of the TIF District and development of the Development Property, and not previously paid by Developer. At the Developer’s request, but no more often than monthly, the Authority will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. At any time the deposit drops below \$1,000 the Developer shall replenish the deposit to the full \$15,000 within thirty (30) days after receipt of written notice thereof from the Authority. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If Administrative Costs incurred, and reasonably anticipated to be incurred, are less than the deposit by the Developer, the Authority shall return to the Developer any funds not anticipated to be needed.

Section 3.6. Records. The Authority and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Minimum Improvements and the costs for which the Developer has been reimbursed with Tax Increment.

Section 3.7. Purpose of Assistance. The parties agree and understand that the purpose of the Authority’s financial assistance to the Developer is to facilitate development of housing and is not a “business subsidy” within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

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## ARTICLE IV

### **Construction of New Housing Development and Rehabilitation of NOAH Housing Development**

Section 4.1. Construction of New Housing Development. The Developer agrees that it will construct the New Housing Development on the Development Property substantially in accordance with the Construction Plans as approved pursuant to Section 4.2 hereof, and at all times prior to the Maturity Date, the Developer will operate and maintain, preserve, and keep the New Housing Development or cause such improvements to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority shall have no obligation to operate or maintain the New Housing Development.

#### Section 4.2. Construction Plans.

(a) Before commencement of construction of the New Housing Development, the Developer shall submit the Construction Plans to the Authority. The Authority Representative will approve the Construction Plans in writing if (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the New Housing Development; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer from all sources (including Developer's equity) for construction of the New Housing Development; and (vi) no uncured Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the Authority Representative shall relieve the Developer of the obligation to comply with the terms of this Agreement or of the Redevelopment Plan, applicable federal, State, and local laws, ordinances, rules, and regulations, or to construct the New Housing Development in accordance therewith. No approval by the Authority Representative shall constitute a waiver of an Event of Default. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, such Construction Plans shall be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. Such rejections shall set forth in detail the reasons therefor, and shall be made within thirty (30) days after the date of their receipt by the Authority. If the Authority Representative rejects any Construction Plans in whole or in part, the Developer shall submit new or corrected Construction Plans within thirty (30) days after written notification to the Developer of the rejection. The provisions of this Section relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative's approval shall not be unreasonably withheld, delayed or conditioned. Said approval shall constitute a conclusive determination that the Construction Plans (and the New Housing Development constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to such previously approved Construction Plans, the Authority Representative shall approve the proposed change and notify the Developer in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Such rejection shall be made within thirty (30) days after receipt of the notice of such change. The Authority's approval of any such change in the Construction Plans may be conditioned on amendment to provisions of this Agreement if such amendments will mitigate the materiality of such proposed changes.

Section 4.3. Rehabilitation of NOAH Housing Development. The Developer shall rehabilitate the NOAH Housing Development pursuant to the Rehabilitation Plan set forth in EXHIBIT F.

Section 4.4. No Displacement of Tenants During Rehabilitation. The Developer agrees to rehabilitate the NOAH Housing Development without displacing the NOAH Housing Development's current tenants (other than a temporary displacement during rehabilitation of each unit, if necessary). All work with respect to the rehabilitation of the NOAH Housing Development shall be in substantial conformity with the Rehabilitation Plan as submitted by the Developer and approved by the Authority.

Section 4.5. Market Value of Minimum Improvements. The Developer agrees that the Construction Plans provide for the construction of New Housing Development having an estimated market value of \$15,785,000. The Developer further agrees that, following the completion of the Rehabilitation Plan, the NOAH Housing Project will have an estimated market value of \$2,805,000. The Minimum Market Value for the Minimum Improvements is \$18,590,000.

Section 4.6. Commencement and Completion of Construction of New Housing Development. Subject to Unavoidable Delays, the Developer will commence the construction of the New Housing Development by July 1, 2021, and substantially complete construction of the New Housing Development by July 1, 2023. Construction is considered to be commenced upon the beginning of physical improvements beyond grading. All work with respect to the New Housing Development to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority.

The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion the New Housing Development.

Section 4.7. Commencement and Completion of Construction of NOAH Housing Development. Subject to Unavoidable Delays, the Developer will commence the rehabilitation of the NOAH Housing Development by July 1, 2021, and substantially complete rehabilitation of the NOAH Housing Development by July 1, 2024.

The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and such successors and assigns, shall promptly begin and diligently prosecute to completion the rehabilitation of the NOAH Housing Development taking into consideration the need to minimize disruption to the existing tenants.

Section 4.8. Certificate of Completion.

(a) Promptly after completion of the New Housing Development and after completion of the rehabilitation of the NOAH Housing Project, each in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the applicable Minimum Improvements (including the dates for beginning and completion thereof), the Authority Representative will furnish the Developer with a Certificate of Completion shown in EXHIBIT D hereof; provided, however, that prior to the issuance of the Certificate of Completion for the applicable Minimum Improvements, the Developer must provide the Authority with evidence satisfactory to the Authority Representative that all contractors, subcontractors, and project laborers have been paid for the applicable Minimum Improvements.

(b) If the Authority Representative shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.5, the Authority Representative shall, within thirty (30) days after written



request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the applicable Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

(c) Regardless of whether a Certificate of Completion is issued by the Authority, the construction of the New Housing Development shall be deemed to be complete upon issuance of a certificate of occupancy by the City.

Section 4.9. Affordability Covenants. The Developer agrees that at all times from initial occupancy of the Minimum Improvements constructed within the TIF District through the date that the TIF District is decertified, at least twenty percent (20%) of the units within the Minimum Improvements shall be reserved for occupancy by individuals whose income is fifty percent (50%) or less of the area's median gross income constructed and satisfy the income requirements for a qualified residential rental project as defined in Section 142(d) of the Internal Revenue Code. With respect to the New Housing Development, at least five (5) units shall be reserved for occupancy by individuals whose income is fifty percent (50%) or less of the area's median gross income. On the date this Agreement is executed, the Developer and the Authority shall execute the Declaration of Restrictive Covenants in substantially the form set forth in EXHIBIT E and record such agreement against the Development Property.

During the term of the Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding any rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant's status as such a certificate/voucher holder.

Section 4.10. Disqualification of TIF District. If the Authority or the City receives notice from the State Department of Revenue, the State Auditor, any Tax Official or any court of competent jurisdiction that the TIF District does not qualify as a "housing district" due to the failure to satisfy the income restrictions described in Section 4.6 hereof, such event shall be deemed an Event of Default under this Agreement; provided, however, that the Authority may not exercise any remedy under this Agreement so long as such determination is being contested and has not been finally adjudicated. If the TIF District is disqualified, the Authority is required by the TIF Act to stop payments of Available Tax Increment to pay principal of and interest on the TIF Note. In addition to any remedies available to the Authority and the City under Article IX hereof, the Developer shall indemnify, defend and hold harmless the Authority and the City for any damages or costs resulting therefrom.

Section 4.11. Affordable Housing Reporting. At least annually, no later than April 1 of each year commencing on the April 1 first following the issuance of the Certificate of Completion, the Developer shall provide a report to the Authority evidencing that the Developer complied with the income affordability covenants set forth in Section 4.6 hereof during the previous calendar year. The income affordability reporting shall be on the form entitled "Tenant Income Certification" from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable, any similar form. The Authority may require the Developer to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the Developer shall send affordable housing reports to the Authority until TIF District is decertified. If the Developer fails to provide the annual reporting required under this Section, the Authority may withhold payments of Available Tax Increment under the TIF Note.

Section 4.12. Notice of Sale of Minimum Improvements. In consideration of the financial assistance provided to the Developer pursuant to Article III hereof, the Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Minimum Improvements.

Section 4.13. Easement Providing Access to Park. In the area shown as the Trail Access Area on the attached EXHIBIT G, the Developer shall create a public pedestrian access to the City's park that is adjacent to the Development Property, including installation of a concrete sidewalk, landscaping, screening, and all other work required by the planning approvals provided by the City of Richfield. The Developer shall grant the City an easement for the limited purpose of providing pedestrian access to the park, subject to the Developer's right of reverter if the City ceases to use the Access Area for pedestrian park access purposes, pursuant to an easement agreement in form and substance reasonable acceptable to both parties, which will include the City's obligation to maintain the easement area after the initial Developer installation work.

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## ARTICLE V

### Insurance

#### Section 5.1. Insurance.

(a) The Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy; the interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); the Authority shall be listed as an additional insured on the policy; and

(iii) workers' compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses;

(ii) comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$2,000,000, and shall be endorsed to show the Authority as an additional insured; and

(iii) such other insurance, including workers' compensation insurance respecting all employees, if any, of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the

Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding \$250,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Developer will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Developer.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of \$250,000 and the Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within eighteen (18) months from the date of damage, the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, such termination shall constitute the Authority's sole remedy under this Agreement as a result of the Developer's failure to repair, reconstruct, or restore the Minimum Improvements. Thereafter, the Authority shall have no further obligations to make any payments under the TIF Note.

(f) The Developer and the Authority agree that all of the insurance provisions set forth in this Article V shall terminate upon the termination of this Agreement.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance shall, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII hereof.

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## ARTICLE VI

### Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys' fees.

Section 6.2. Reduction of Taxes. The Developer agrees that after the date of certification of the TIF District and prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Development Property through (a) willful destruction of the Development Property or any part thereof (except for the demolition of structures required for construction of the New Housing Development or the rehabilitation of the NOAH Housing Development); or (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Developer also agrees that it will not, prior to the Maturity Date, (i) seek exemption from property tax for the Development Property; (ii) convey or transfer or allow conveyance or transfer of the Development Property to any entity that is exempt from payment of real property taxes under State law; or (iii) seek or agree to any reduction of the assessor's estimated market value to below the Minimum Market Value.

The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the assessor's estimated market value for the Development Property reduced to not less than the Minimum Market Value. Such activity must be preceded by written notice from the Developer to the Authority indicating its intention to do so.

Upon receiving such notice, or otherwise learning of the Developer's intentions, the Authority may suspend or reduce payments due under the TIF Note except for the portion of such payments from Available Tax Increment based on the Minimum Market Value, or the assessor's estimated market value for the year in which the Minimum Improvements have been completed, if less than Minimum Market Value, until the actual amount of the reduction in market value is determined, whereupon the Authority will make the suspended payments less any amount that the Authority is required to repay the County as a result of any retroactive reduction in market value of the Development Property.

During the period that the payments are subject to suspension, the Authority may make partial payments on the TIF Note, from the amounts subject to suspension, if it determines, in its sole and absolute discretion, that the amount retained will be sufficient to cover any repayment which the County may require. Upon resolution of the Developer's tax petition, any Available Tax Increment deferred and withheld under this Section shall be paid, without interest thereon, to the extent payable under the assessor's final determination of market value.

The Authority's suspension of payments on the TIF Note pursuant to this Section shall not be considered a default under Section 9.1 hereof.

Section 6.3. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon a transfer of the Development Property to another person or entity, the Developer will remain obligated under Sections 6.1 and 6.2 hereof, unless the Developer is released from such obligations in accordance with the terms and conditions of Section 8.2(b) or 8.3 hereof.

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## ARTICLE VII

### Financing

#### Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Developer shall submit to the Authority evidence of one or more commitments for financing which, together with committed equity for such construction, is sufficient for payment of the Minimum Improvements. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subsection (a) above, then the Authority shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within thirty (30) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of financing within thirty (30) days after such rejection.

Section 7.2. Authority's Option to Cure Default in Mortgage. In the event that any portion of the Developer's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to this Article VII, the Developer shall cause the Authority to receive copies of any notice of default received by the Developer from the Holder of such Mortgage. Thereafter, the Authority shall have the right, but not the obligation, to cure any such default on behalf of the Developer within such cure periods as are available to the Developer under the Mortgage documents.

Section 7.3. Modification; Subordination. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the Authority agrees to subordinate its rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing, under terms and conditions reasonably acceptable to the Authority. An agreement to subordinate this Agreement must be approved by the Board.

Section 7.4. Termination. All the provisions of this Article VII shall terminate with respect to the Minimum Improvements, upon delivery of the Certificate of Completion for the Minimum Improvements. The Developer or any successor in interest to the Minimum Improvements or portion thereof, may sell or engage in financing or any other transaction creating a mortgage or encumbrance or lien on the Minimum Improvements or any portion thereof for which a Certificate of Completion has been obtained, without obtaining prior written approval of the Authority; provided that such sale, financing or other transaction creating a mortgage or encumbrance shall not be deemed as resulting in any subordination of the Authority's rights under this Agreement unless the Authority expressly consents to such a subordination.

(The remainder of this page is intentionally left blank.)

## ARTICLE VIII

### **Prohibitions Against Assignment and Transfer; Indemnification**

Section 8.1. Representation as to Development. The Developer represents and agrees that its purchase of the Development Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of development of the Development Property and not for speculation in land holding.

Section 8.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to issuance of the Certificate of Completion for the applicable Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant), without the prior written approval of the Authority unless the Developer remains liable and bound by this Agreement in which event the Authority's approval is not required. Any such transfer shall be subject to the provisions of this Agreement.

(b) Prior to the issuance of the applicable Certificate of Completion, in the event the Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the Authority shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the Authority would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority to the contrary, no such transfer or approval



by the Authority thereof shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII, shall be in a form reasonably satisfactory to the Authority.

In the event the foregoing conditions are satisfied then the Developer shall be released from its obligation under this Agreement.

(c) After issuance of the Certificate of Completion for the applicable Minimum Improvements, the Developer may transfer or assign the applicable portion of the Development Property or the Developer's interest in this Agreement if it obtains the prior written consent of the Authority (which consent will not be unreasonably withheld) and the transferee or assignee is bound by all the Developer's obligations hereunder. The Developer shall submit to the Authority written evidence of any such transfer or assignment, including the transferee or assignee's express assumption of the Developer's obligations under this Agreement. If the Developer fails to provide such evidence of transfer and assumption, the Developer shall remain bound by all its obligations under this Agreement.

### Section 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Authority and its governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and its respective governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its governing body members, officers, agents or employees, the Developer agrees to protect and defend the Authority and its governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Minimum Improvements. As to any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its governing body members, officers, agents or employees, the Authority agrees to protect and defend the Developer, its officers, agents, servants and employees and hold the same harmless from any such proceedings.

(c) The Authority and its governing body members, officers, agents, servants and employees thereof shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any governing body member, officer, agent, servant or employee of the Authority in the individual capacity thereof.

## ARTICLE IX

### Events of Default

Section 9.1. Events of Default. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) failure by the Developer or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or

(b) if the Developer:

(i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

(ii) makes an assignment for benefit of its creditors;

(iii) fails to pay real estate taxes on the Development Property or the Minimum Improvements as they become due;

(iv) admits in writing its inability to pay its debts generally as they become due;

(v) is adjudicated a bankrupt or insolvent; or

(vi) fails to comply with labor laws.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement;

(b) cancel and rescind or terminate this Agreement, subject to the provisions of Section 9.3 below;

(c) upon a default by the Developer resulting from the Developer’s noncompliance with labor laws, the Authority may do one or more of the following: (i) delay the issuance of the TIF Note until the Developer is in compliance with labor laws; (ii) reduce the principal amount of the TIF Note issued or to be issued by up to 20%; and/or (iii) if compliance with labor laws cannot be accomplished, terminate this Agreement;

(d) upon a default by the Developer, other than as provided in subsection (c) above, the Authority may suspend payments under the TIF Note or terminate the TIF Note and the TIF District, subject to the provisions of Section 9.3 hereof; or

(e) take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. Termination or Suspension of TIF Note. After the Authority has issued its Certificate of Completion for the Minimum Improvements, the Authority may exercise its rights under Section 9.2 hereof only for the following Events of Default:

(a) the Developer fails to pay real estate taxes or assessments on the Development Property or any part thereof when due, and such taxes or assessments shall not have been paid, or provision satisfactory to the Authority made for such payment, within thirty (30) days after written demand by the Authority to do so;

(b) the Developer fails to comply with Developer's obligation to operate and maintain, preserve, and keep the Minimum Improvements or cause such improvements to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof, in good repair and condition, pursuant to Sections 4.1 and 5.1 hereof; provided that, upon Developer's failure to comply with Developer's obligations under Section 4.1 or 5.1 hereof, if uncured after thirty (30) days' written notice to the Developer of such failure, the Authority may only suspend payments under the TIF Note until such time as Developer complies with said obligations; if the Developer fails to comply with said obligations for a period of eighteen (18) months, the Authority may terminate the TIF Note and the TIF District; or

(c) if the Developer fails to provide the annual reports required by Section 4.8 hereof regarding compliance with the income restrictions described in Section 4.6 hereof, the Authority may suspend payments of Available Tax Increment under the TIF Note.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notices already required in Sections 9.2 and 9.3 hereof.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.6. Attorneys' Fees and Costs. Whenever any Event of Default occurs and if the Authority employs attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the Authority prevails in the action, the Developer agrees that it will, within ten (10) days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

## ARTICLE X

### Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent, and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Authority shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, State, and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and such successors and assigns, shall use the Development Property solely for the development of housing in accordance with the terms of this Agreement, including the affordability requirements of Section 4.6, and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched both by (i) registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and (ii) email at the addresses set forth below (provided, however, delivery by registered or certified mail shall be sufficient if the email addresses provided are no longer accurate); and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 6345 Partners, LLC, c/o North Bay Companies, LLC, 2316 4<sup>th</sup> Ave South, Minneapolis, MN 55404, Attn: President, e-mail:lbarrett@northbaycos.com, with a copy to Faegre Drinker Biddle & Reath, 90 South Seventh Street, Suite 2200, Minneapolis, MN 55402, ATTN: Peter Berrie, e-mail; Peter.Berrie@faegredrinker.com; and

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 6700 Portland Avenue South, Richfield, MN 55423, Attn: Community Development Director, email jstark@richfield.gov;

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The Authority may record a memorandum of this Agreement and any amendments thereto with the County Recorder and/or Registrar of Titles of the County, as the case may be. The Developer shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement executed by the Authority and the Developer.

Section 10.10. Preliminary Development Agreement. On the date of this Agreement, the Preliminary Development Agreement shall terminate.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Authority has caused this Contract for Private Development to be duly executed in its name and behalf and the Developer has caused this Contract for Private Development to be duly executed in its name and behalf as of the date and year first written above.

**HOUSING AND REDEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF RICHFIELD,  
MINNESOTA**

By \_\_\_\_\_  
Its Chair

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 2020, by Mary Supple, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 2020, by John Stark, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

Execution page of the Developer to the Contract for Private Development, dated the date and year first written above.

**6345 PARTNERS, LLC**

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of 6345 Partners, LLC, a Minnesota limited liability company, on behalf of the Developer.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**DEVELOPMENT PROPERTY**

PARCEL 1:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lots 7 and 8, Block 5, Lyndale Oaks, Hennepin County, Minnesota.

(Abstract property)

Along with:

Easement for parking purposes as contained in Parking Easement recorded January 23, 1990 as Document No. 5619455.

PARCEL 2:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lot 6, Block 5, Lyndale Oaks, Hennepin County, Minnesota.

(Abstract Property)

PARCEL 3:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lot 5, Block 5, Lyndale Oaks, Hennepin County, Minnesota.

(Abstract property)

PARCEL 4:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lot 4, Block 5, Lyndale Oaks, Hennepin County, Minnesota

(Abstract property)

PARCEL 5:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lot 3, Block 5, "Lyndale Oaks", Hennepin County, Minnesota, according to the recorded plat thereof.

[Abstract Property]



**EXHIBIT B**  
**FORM OF TIF NOTE**

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF HENNEPIN  
HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE  
CITY OF RICHFIELD

No. R-1 \$ \_\_\_\_\_

TAX INCREMENT LIMITED REVENUE NOTE  
SERIES \_\_\_\_\_

Rate Date  
of Original Issue  
\_\_\_\_\_ % \_\_\_\_\_, 20\_\_

The Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority"), for value received, certifies that it is indebted and hereby promises to pay to 6345 Partners, LLC, a Minnesota limited liability company, or registered assigns (the "Owner"), the principal sum of \$ \_\_\_\_\_ and to pay interest thereon at the rate per annum set forth above, as and to the extent set forth herein. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Contract for Private Development, dated \_\_\_\_\_, 2020 (the "Agreement"), between the Authority and the Owner.

1. Payments. Principal and interest (the "Payments") shall be paid on August 1, 20\_\_, and each February 1 and August 1 thereafter (each a "Payment Date") to and including February 1, 20\_\_, in the amounts and from the sources set forth in Section 3 herein. Payments shall be applied first to accrued interest, and then to unpaid principal.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon thirty (30) days' written notice to the Authority. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Interest at the rate stated above shall accrue on the unpaid principal, commencing on the Date of Original Issue. Interest shall accrue on a simple basis and will not be added to principal. Interest shall be computed on the basis of a year of three hundred sixty (360) days and charged for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from "Available Tax Increment," which will mean, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Development Property and paid to the Authority by the County in the six (6) months preceding the Payment Date. The principal of and interest on this Note shall be payable each Payment Date solely from Available Tax Increment. Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of

Default under this Agreement that has not been waived by the Authority. Once the Event of Default is cured or waived by the Authority, withheld Tax Increment shall be Available Tax Increment.

The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of Available Tax Increment. The Authority shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the payment of Available Tax Increment from the last payment of Tax Increment the Authority is entitled to receive from the County with respect to the Development Property.

4. Optional Prepayment. The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Note.

5. Termination. At the Authority's option, this Note shall terminate and the Authority's obligation to make any payments under this Note shall be discharged upon the occurrence of an Event of Default on the part of the Developer, but only if the Event of Default has not been cured in accordance with Section 9.2 of the Agreement.

6. Nature of Obligation. This Note is issued to aid in financing certain public development costs and administrative costs of a Redevelopment Project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Board of Commissioners of the Authority on \_\_\_\_\_, 2020, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its financial or municipal advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely.

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

8. Registration. This Note is issuable only as a fully registered note without coupons.

9. Transfer. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the City Clerk of the City of Richfield. Upon surrender for transfer of this Note, including any assignment or exchange thereof, duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Executive Director, as registrar (the "Registrar"), duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing,

and the payment by the Owner of any tax, fee, or governmental charge required to be paid by or to the Authority with respect to such transfer or exchange, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

Notwithstanding the foregoing, this Note shall not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter in Exhibit C attached to the Agreement or a certificate of the transferor, in a form satisfactory to the Executive Director of the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

The Owner may assign this Note to a lender that provides all or part of the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. The Authority hereby consents to such assignment, conditioned upon receipt of an investment letter from such lender in substantially the form attached to the Agreement as Exhibit C, or other form reasonably acceptable to the Executive Director of the Authority. The Authority also agrees that future assignments of this Note may be approved by the Executive Director of the Authority without action of the Board of Commissioners of the Authority, upon the receipt of an investment letter in substantially the form of Exhibit C of the Agreement or other investment letter reasonably acceptable to the Authority from such assignees.

This Note is issued pursuant to the Resolution and is entitled to the benefits thereof, which Resolution is incorporated herein by reference.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota has caused this Note to be executed with the manual signatures of its Chair and Executive Director, all as of the Date of Original Issue specified above.

**HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RICHFIELD, MINNESOTA**

---

Executive Director

---

Chair

**REGISTRATION PROVISIONS**

The ownership of the unpaid balance of the within Note is registered in the bond register of the Authority's Executive Director, in the name of the person last listed below.

Date of Registration

Registered Owner

Signature of Executive Director

6345 Partners, LLC  
Federal ID # \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT C

### FORM OF INVESTMENT LETTER

To the Housing and Redevelopment Authority in and for the City of Richfield (the “Authority”)  
Attention: Executive Director

Re: \$ \_\_\_\_\_ Tax Increment Limited Revenue Note, Series 20\_\_

The undersigned, as Owner of \$ \_\_\_\_\_ in principal amount of the above-captioned Note (the “Note”) issued pursuant to a resolution adopted by the Board of Commissioners of the Authority on \_\_\_\_\_, 20\_\_ (the “Resolution”), hereby represents to you and to Kennedy & Graven, Chartered, Minneapolis, Minnesota, development counsel, as follows:

1. We understand and acknowledge that the TIF Note is delivered to the Owner as of this date pursuant to the Resolution and the Contract for Private Development, dated \_\_\_\_\_, 20\_\_ (the “Contract”), between the Authority and the Owner.

2. We understand that the TIF Note is payable as to principal and interest solely from Available Tax Increment (as defined in the TIF Note).

3. We further understand that any estimates of Tax Increment prepared by the Authority or its financial or municipal advisors in connection with the TIF District, the Contract or the TIF Note are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

4. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the above-stated principal amount of the TIF Note.

5. We acknowledge that no offering statement, prospectus, offering circular or other comprehensive offering statement containing material information with respect to the Authority and the TIF Note has been issued or prepared by the Authority, and that, in due diligence, we have made our own inquiry and analysis with respect to the Authority, the TIF Note and the security therefor, and other material factors affecting the security and payment of the TIF Note.

6. We acknowledge that we have either been supplied with or have access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the TIF Note and the security therefor, and that as a reasonable investor we have been able to make our decision to purchase the above-stated principal amount of the TIF Note.

7. We have been informed that the TIF Note (i) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, or under federal securities laws or regulations; (ii) will not be listed on any stock or other securities exchange; and (iii) will carry no rating from any rating service.

8. We acknowledge that neither the Authority nor Kennedy & Graven, Chartered has made any representations as to the status of interest on the TIF Note for state or federal income tax purposes.

9. We represent to you that we are purchasing the TIF Note for our own accounts and not for resale or other distribution thereof, except to the extent otherwise provided in the TIF Note, the Resolution, or any other resolution adopted by the Authority.

10. All capitalized terms used herein have the meaning provided in the Contract unless the context clearly requires otherwise.

11. The Owner's federal tax identification number is \_\_\_\_\_.

12. We acknowledge receipt of the TIF Note as of the date hereof.

**6345 PARTNERS, LLC**

By \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

**EXHIBIT D**

**FORM OF CERTIFICATE OF COMPLETION**

The undersigned hereby certifies that 6345 Partners, LLC, a Minnesota limited liability company (the “Developer”), has fully complied with its obligations under Articles III and IV of that document titled “Contract for Private Development,” dated \_\_\_\_\_, 2020, between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota and the Developer (the “Agreement”), a memorandum of which was recorded in the office of [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota on \_\_\_\_\_, 20\_\_\_\_, as document number \_\_\_\_\_, with respect to construction of the [New Housing Development][NOAH Housing Development] in accordance with Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of such Minimum Improvements under Articles III and IV of the Agreement.

Dated: \_\_\_\_\_, 20\_\_\_\_.

**HOUSING AND REDEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF RICHFIELD,  
MINNESOTA**

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

## EXHIBIT E

### FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Declaration”), is by 6345 Partners, LLC, a Minnesota limited liability company (the “Developer”), in favor of the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

#### RECITALS:

WHEREAS, the Authority has provided to the Developer certain financial assistance with respect to real property legally described in EXHIBIT A attached hereto (the “Development Property”) to the Developer pursuant to a Contract for Private Development, dated \_\_\_\_\_, 2020 (the “Contract”), between the Authority and the Developer; and

WHEREAS, pursuant to the Contract, the Developer will construct a multifamily housing development consisting of the construction of an approximately 82-unit multifamily housing development, including an accessible two-bedroom unit at ground level, on the Development Property (the “New Housing Development”) and the purchase and rehabilitation of a 22-unit apartment building with naturally occurring affordable rents located on the Development Property (the “NOAH Housing Development,” and collectively with the New Housing Development, the “Project”), and to cause compliance with certain affordability covenants described in Section 4.6 of the Contract; and

WHEREAS, Section 4.6 of the Contract requires that the Developer cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.6 of the Contract; and

WHEREAS, the Developer intends, declares, and covenants that the restrictive covenants set forth herein will be and are covenants running with the Development Property for the term described herein and binding upon all subsequent owners of the Development Property for the term described herein, and are not merely personal covenants of the Developer; and

WHEREAS, capitalized terms in this Declaration have the meaning provided in the Contract unless otherwise defined herein.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer agrees as follows:

1. Term of Restrictions.

(a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof will commence on the date a certificate of occupancy is received from the City of Richfield, Minnesota (the “City”) for all rental units within the Project. All rental units in the Project will be referred to herein as “Rental Housing Units.” The period from commencement to termination is the “Qualified Project Period.”



(b) Termination of Declaration. This Declaration will terminate upon the date that is twenty-six (26) years after the commencement of the Qualified Project Period; provided, however, that if the TIF Note is paid in full, the Contract is terminated, or the TIF District expires, terminates, or is decertified, this Declaration shall terminate. Notwithstanding the foregoing, pursuant to the City's Inclusionary Housing Policy, this Declaration must be in effect for at least ten (10) years after the date the New Housing Development is placed in service.

(c) Removal from Real Estate Records. Upon termination of this Declaration, the Authority will, upon request by the Developer or its assigns, provide a document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.

2. Project Restrictions.

(a) the Developer represents, warrants, and covenants that:

(i) All leases of Rental Housing Units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) will contain clauses, among others, wherein each individual lessee:

(1) certifies the accuracy of the statements made in its application and Eligibility Certification (as defined in Section 3(a)(ii) hereof); and

(2) agrees that the family income at the time the lease is executed will be deemed substantial and material obligation of the lessee's tenancy, that the lessee will comply promptly with all requests for income and other information relevant to determining low or moderate income status from the Developer or the Authority, and that the lessee's failure or refusal to comply with a request for information with respect thereto will be deemed a violation of a substantial obligation of the lessee's tenancy.

(ii) Upon at least forty-eight (48) hours' notice, the Developer will permit any duly authorized representative of the Authority to inspect the books and records of the Developer pertaining to the income of Qualifying Tenants residing in the Project.

3. Occupancy Restrictions.

(a) Tenant Income Provisions. The Developer represents, warrants, and covenants that:

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, at least twenty percent (20%) of the Rental Housing Units (i.e., 21 Rental Housing Units) will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants means those persons and families who are determined from time to time by the Developer to have combined adjusted income that does not exceed fifty percent (50%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year, except as provided in the last sentence of this paragraph. For purposes of this definition, the occupants of a residential unit will not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income will be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and

applicable regulations) (the “Next Available Unit Rule”) must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Rental Housing Unit will not continue to be treated as a unit occupied by a Qualifying Tenant. A tenant that initially qualified as a Qualifying Tenant, will continue to qualify as a Qualifying Tenant even if such Qualifying Tenant’s income exceeds fifty percent (50%) of the Metro Area median income so long as the Next Available Unit Rule is complied with if the Qualifying Tenant’s income exceeds 140% of the maximum qualifying income.

(ii) Placement of Affordable Units. At least five (5) of the Rental Housing Units in the New Housing Development will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants.

(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant will be required annually to sign and deliver to the Developer a Certification of Tenant Eligibility substantially in the form attached hereto as EXHIBIT B, or in any other form as may be approved by the Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, so long as the Authority notifies the Developer in writing of such requirements prior to the applicable lease signing, the person will be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that the tenant continues to be a Qualifying Tenant within the meaning of Section 3(a) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Rental Housing Unit or resided therein during the immediately preceding calendar year.

(iii) Lease. The form of lease to be utilized by the Developer in renting any Rental Housing Units to any person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by the person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by the person with respect to the Eligibility Certification.

(iv) Annual Report. The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the Rental Housing Units which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of the certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing the certificate after due inquiry, all the Rental Housing Units were rented or available for rental on a continuous basis during the year to members of the general public and that the Developer was not otherwise in default under this Declaration during the year.

(v) Notice of Non-Compliance. The Developer will immediately notify the Authority if at any time during the term of this Declaration the Rental Housing Units are not occupied or available for occupancy as required by the terms of this Declaration.

(b) Section 8 Housing. During the term of this Declaration, the Developer shall not adopt any policies specifically excluding rental to tenants holding Section 8 certificate/voucher holders.

4. Transfer Restrictions. The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any conveyance, transfer, assignment, or any other disposition of the Project prior to the termination of the Rental Restrictions and Occupancy Restrictions provided herein (the "Transfer") that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Developer under this Declaration, including this Section 4, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the "Assumption Agreement"). The Developer will deliver the Assumption Agreement to the Authority prior to the Transfer.

5. Notice of Sale. In consideration of the financial assistance provided to the Developer pursuant to Article IV of the Contract, the Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Project.

6. Enforcement.

(a) The Developer will permit, during normal business hours and upon at least forty-eight (48) hours' prior written notice, any duly authorized representative of the Authority to inspect any books and records of the Developer regarding the Project with respect to the incomes of Qualifying Tenants.

(b) The Developer will submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial the Developer's continuing compliance with the provisions specified in this Declaration.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.6 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Project on the Development Property, hereby agrees and consents that the Authority will be entitled, for any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Developer understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Contract.

7. Indemnification. The Developer hereby indemnifies, and agrees to defend and hold harmless the Authority and its members, officers, and agents from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by the Developer to comply with the terms of this Declaration, or on account of any representation or warranty of the Developer contained herein being untrue.

8. Agent of the Authority. The Authority will have the right to appoint an agent to carry out any of its duties and obligations hereunder, and will inform the Developer of any agency appointment by written notice.

9. Severability. The invalidity of any clause, part or provision of this Declaration will not affect the validity of the remaining portions thereof.

10. Notices. All notices to be given pursuant to this Declaration must be in writing and will be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to any other place as a party may from time to time designate in writing. The Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications are sent. The initial addresses for notices and other communications are as follows:

To the Authority:       Housing and Redevelopment Authority  
                                  in and for the City of Richfield, Minnesota  
                                  6700 Portland Avenue South  
                                  Richfield, MN 55423  
                                  Attn: Community Development Director

To the Developer:       6345 Partners, LLC  
                                  c/o North Bay Companies, LLC  
                                  2316 4<sup>th</sup> Ave South  
                                  Minneapolis, MN 55404  
                                  Attn: President

11. Governing Law. This Declaration is governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

12. Attorneys' Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Developer to enforce the provisions of this Declaration, the Developer agrees to pay the reasonable attorneys' fees and other reasonable expenses paid or incurred by the Authority in connection with the action.

13. Declaration Binding. This Declaration and the covenants contained herein will run with the real property comprising the Project and will bind the Developer and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits will inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictive Covenants to be signed by its duly authorized representative as of the date and year first written above.

**6345 PARTNERS, LLC**

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of 6345 Partners, LLC, a Minnesota limited liability company, on behalf of the Developer.

\_\_\_\_\_  
Notary Public

This document was drafted by:  
KENNEDY & GRAVEN, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, Minnesota 55402  
Telephone: 612-337-9300

This Declaration of Restrictive Covenants is acknowledged and consented to by:

**HOUSING AND REDEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF RICHFIELD,  
MINNESOTA**

By \_\_\_\_\_  
Its Chair

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 2020, by Mary Supple, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 2020, by John Stark, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

PARCEL 1:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lots 7 and 8, Block 5, Lyndale Oaks, Hennepin County, Minnesota.

(Abstract property)

Along with:

Easement for parking purposes as contained in Parking Easement recorded January 23, 1990 as Document No. 5619455.

PARCEL 2:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lot 6, Block 5, Lyndale Oaks, Hennepin County, Minnesota.

(Abstract Property)

PARCEL 3:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lot 5, Block 5, Lyndale Oaks, Hennepin County, Minnesota.

(Abstract property)

PARCEL 4:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lot 4, Block 5, Lyndale Oaks, Hennepin County, Minnesota

(Abstract property)

PARCEL 5:

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

Lot 3, Block 5, "Lyndale Oaks", Hennepin County, Minnesota, according to the recorded plat thereof.

[Abstract Property]

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATION OF TENANT ELIGIBILITY

Certification of Tenant Eligibility

(INCOME COMPUTATION AND CERTIFICATION)

Project: 6345 Lyndale Avenue South, Richfield, Minnesota

Owner: \_\_\_\_\_

Unit Type: \_\_\_\_\_ [studio]    \_\_\_\_\_ [1 BR]    \_\_\_\_\_ [2 BR]

1. I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

Name of Members of the Household	Relationship To Head of Household	Age	Place of Employment
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Income Computation

2. The anticipated income of all the above persons during the 12-month period beginning this date,

(a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but

(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses; amounts of educational



scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for these types of purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: \$\_\_\_\_\_.

3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:

(a) the total value of all such assets owned by all such persons: \$\_\_\_\_\_;

(b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: \$\_\_\_\_\_; and

(c) the amount of such income which is included in income listed in item 2: \$\_\_\_\_\_.

4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during at least five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes \_\_\_\_\_

No \_\_\_\_\_

(b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes \_\_\_\_\_

No \_\_\_\_\_

THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

\_\_\_\_\_  
Head of Household

\_\_\_\_\_  
Spouse

FOR COMPLETION BY OWNER  
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:
  - (a) Enter amount entered for entire household in 2 above: \$ \_\_\_\_\_
  - (b) If the amount entered in 3(a) above is greater than \$5,000, enter the greater of (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in 3(a):  
\$ \_\_\_\_\_
  - (c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): \$ \_\_\_\_\_

2. The amount entered in 1(c) is less than or equal to 50% of median income for the area in which the Project is located, as defined in the Declaration. 50% is necessary for status as a "Qualifying Tenant" under Section 3(a) of the Declaration.

3. Number of apartment unit assigned: \_\_\_\_\_.

4. This apartment unit was \_\_\_\_ was not \_\_\_\_ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to 50% of Median Income in the area.

5. Check as applicable: \_\_\_\_\_ Applicant qualifies as a Qualifying Tenant (tenants of at least \_\_\_\_\_ units must meet), or \_\_\_\_\_ Applicant otherwise qualifies to rent a unit.

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS NO KNOWLEDGE OF ANY FACTS WHICH WOULD CAUSE HIM/HER TO BELIEVE THAT ANY OF THE INFORMATION PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.

**6345 PARTNERS, LLC**

By \_\_\_\_\_  
Its \_\_\_\_\_

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Certificate of  
Continuing Program Compliance

Date: \_\_\_\_\_

The following information with respect to the multifamily housing development located at 6345 Lyndale Avenue South, Richfield, Minnesota (the "Project"), is being provided by 6345 Partners, LLC, a Minnesota limited liability company (the "Owner"), to the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated \_\_\_\_\_, 20\_\_ (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is \_\_\_\_\_. The total number of these units occupied is \_\_\_\_\_.

(B) The following residential units (identified by unit number) are currently occupied by "Qualifying Tenants," as the term is defined in the Declaration (for a total of \_\_\_ units):

[Studio Units]: \_\_\_\_\_

[1 BR Units]: \_\_\_\_\_

[2 BR Units]: \_\_\_\_\_

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since \_\_\_\_\_, 20\_\_, the date on which the last "Certificate of Continuing Program Compliance" was filed with the Authority by the Owner:

Unit Number	Previous Designation of Unit (if any)	Replacing Unit Number
_____	_____	_____
_____	_____	_____

(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

	Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	Rent
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
[etc.]							

(E) The Owner has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Owner in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since \_\_\_\_\_, 20\_\_\_\_, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Owner.

(F) In renting the residential units in the Project, the Owner has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (D) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least twelve (12) months.

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and no matters have come to the attention of the Owner which would indicate that any of the information provided herein, or in any “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Owner certifies that as of the date hereof at least \_\_\_\_\_ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.

(J) The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Owner, on \_\_\_\_\_, 20\_\_\_\_.

**6345 PARTNERS, LLC**

By \_\_\_\_\_

Its \_\_\_\_\_

**EXHIBIT F**  
**REHABILITATION PLAN**

<b>Action</b>	<b>Expected Commencement Date</b>	<b>Expected Completion Date</b>

**EXHIBIT G**  
**ACCESS AREA**

RC125-2 (JAE)  
638419v1



**STAFF REPORT NO. 24**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/20/2020**

REPORT PREPARED BY: Melissa Poehman, Asst. Community Development Director  
OTHER DEPARTMENT REVIEW: N/A

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
7/15/2020

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the attached resolution approving a Preliminary Development Agreement between the Housing and Redevelopment Authority and PLH & Associates - Construction Services, LLC for redevelopment of property at 101 - 66th Street East.**

**EXECUTIVE SUMMARY:**

On June 15, 2020, representatives of PLH & Associates, LLC (Developer) presented updated concepts of their previously approved mixed use development at 101 - 66th Street East to the Housing and Redevelopment Authority (HRA) and City Council. The Developer is proposing to reduce ground floor retail space in order to provide additional, affordable apartment units.

Based on feedback received at that meeting, the Developer would like to proceed with the development of plans and further discussion of potential HRA assistance through creation of a Tax Increment Financing (TIF) District. The attached Preliminary Development Agreement (Agreement) provides for the support and cooperation of the HRA as the Developer works to develop a feasible project for the site. The Agreement provides several benchmarks that must be met, including submitting a financial proforma, applying for a sketch plan review, and contracting for a blight study of the existing buildings, or the HRA may terminate the Agreement. The Agreement requires that a Development Agreement be negotiated by October 20, 2020.

**RECOMMENDED ACTION:**

**By motion:**

- 1. Approve the Preliminary Development Agreement between the Housing and Redevelopment Authority and PLH & Associates - Construction Services, LLC for the development of property at 101 - 66th Street East ; and**
- 2. Authorize execution of the Agreement by the Housing and Redevelopment Authority Chair and Executive Director.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- The Emi mixed use project was approved with 31 market-rate apartments and 6,000 square feet of first floor commercial space in 2018.
- One year extension of land use approvals granted in June 2019, additional six month extension granted in May 2020.



**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The property is zoned and guided for Mixed Use and located along a major corridor of investment for the City (66th Street).
- The City's Comprehensive Plan and Housing Visioning statement encourage the development of a full range of housing choices.
- The City's Inclusionary Housing Policy requires the inclusion of at least 20% of units affordable at 60% of the Area Median Income for all projects receiving city financial assistance.
- Changes that would increase the number of units in the project by more than five percent (1 unit in this case), will require a Major Amendment to the approved Planned Unit Development.

**C. CRITICAL TIMING ISSUES:**

- The following benchmarks have been established to ensure that progress is made toward land use approvals and approval of a Development Agreement:
  - Submit for Sketch Plan Review by July 27, 2020
  - Revised proforma by July 27, 2020
  - Development Agreement approved by October 20, 2020

**D. FINANCIAL IMPACT:**

- The Preliminary Development Agreement provides for the reimbursement of all out-of-pocket administrative costs, including legal and financial consultant fees and nominal staff time.
- Additional financial considerations, including the issuance of any Tax Increment Financing, would be considered as part of the Development Agreement.

**E. LEGAL CONSIDERATION:**

- The attached Agreement was prepared by the HRA Attorney.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the Agreement.
- Approve the Agreement with modifications.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Paul Lynch, PLH & Associates - Construction Services, LLC

**ATTACHMENTS:**

Description	Type
□ Resolution	Resolution Letter
□ Preliminary Development Agreement	Contract/Agreement

**HOUSING AND REDEVELOPMENT AUTHORITY  
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING PRELIMINARY DEVELOPMENT AGREEMENT  
WITH PLH & ASSOCIATES – CONSTRUCTION SERVICES, LLC**

WHEREAS, PLH & Associates – Construction Services, LLC, a Minnesota limited liability company, or one of its wholly owned affiliates (the “Developer”), has proposed the redevelopment of certain property that it owns located at 66<sup>th</sup> Street and 1<sup>st</sup> Avenue in Richfield, Minnesota (the “Development Property”), for the purpose of constructing approximately 30 to 39 housing units and approximately 1,800 square feet of retail space (the “Project”); and

WHEREAS, the Developer and the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “HRA”), have been engaged in informal discussion regarding the Project and the proposed creation of a redevelopment tax increment financing district and plan including the Development Property; and

WHEREAS, the Board of the Commissioners of the HRA (the “HRA Board”) has been presented with a Preliminary Development Agreement (the “Preliminary Development Agreement”) proposed to be entered into between the HRA and the Developer, which sets forth the Developer’s intentions and the conditions under which the Developer will undertake the Project; and

WHEREAS, the HRA Board has reviewed the Preliminary Development Agreement and finds that the execution thereof by the HRA and performance of the HRA’s obligations thereunder are in the best interest of the City of Richfield, Minnesota, and its residents; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota as follows:

1. The Preliminary Development Agreement presented to the HRA and on file with the Executive Director is hereby in all respects approved, subject to modifications that do not alter the substance of the transaction and that is approved by the Chair and Executive Director; provided that execution of such document by such officials shall be conclusive evidence of approval.

2. The Chair and Executive Director are hereby authorized to execute the Preliminary Development Agreement on behalf of the HRA and to carry out on behalf of the HRA the HRA’s obligations thereunder.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20<sup>th</sup> day of July, 2020.

\_\_\_\_\_  
Mary B. Supple, Chair

ATTEST:

\_\_\_\_\_  
Maria Regan Gonzalez, Secretary

## **PRELIMINARY DEVELOPMENT AGREEMENT**

THIS PRELIMINARY DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into this 20<sup>th</sup> day of July, 2020, by and between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a Minnesota public body corporate and politic (the “HRA”), and PLH & Associates – Construction Services, LLC, a Minnesota limited liability company, or one of its wholly owned affiliates (the “Developer”).

### **RECITALS:**

First: The Developer and the HRA have been engaged in informal discussions regarding the development of certain property located at 66<sup>th</sup> Street and 1<sup>st</sup> Avenue in Richfield, Minnesota (the “City”), that the Developer owns, which is legally described in EXHIBIT A attached hereto (the “Development Property”);

Second: The Developer is proposing to redevelop the Development Property and construct approximately 30 to 39 housing units and approximately 1,800 square feet of retail space (the “Project”);

Third: In order to assist the Developer with the redevelopment of the Development Property, the HRA is considering the establishment of a redevelopment tax increment financing district that includes the Development Property;

Fourth: Based on initial reviews of the proposal, it appears that the Project is potentially feasible; however, further review is needed;

Fifth: The parties wish to cooperate in further analyzing the potential and feasibility of the Project and are willing to proceed with such analysis as described in this Agreement;

Sixth: The parties acknowledge that the Developer will expend substantial time and effort, and incur substantial expense in pursuing the Project;

Seventh: The Developer is willing to undertake the activities described in this Agreement only with the reasonable assurance from the HRA that it will support and cooperate with the Developer in its efforts;

Eighth: The HRA and the Developer have executed this Agreement to document their understanding with respect to the proposed Project.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and mutual obligations of the parties contained herein, each of them does hereby represent, covenant and agree with the other as follows:

1. Statement of Intent.

It is the intention of the parties that during the term of this Agreement the following activities will take place:

- (a) Plan Review and Refinement. The Developer will complete and provide a revised general development plan, including parking layout and design, to the HRA for review and comment. This submission shall be made on or before July 27, 2020 as an Application for Sketch Plan Review. This Review involves a staff review of the general development plan by HRA staff. Following the Sketch Plan Review, the Developer will undertake any additional studies or refinements to the general development plan for the Project that are necessary to determine that the plan (i) complies with the City's land use requirements; and (ii) provides sufficient detail to permit the reviews described in paragraph (d) below. Upon completion of the staff-level Sketch Plan Review, either party may request that the general development plan be brought before a work session of the City Council of the City (the "City Council") and/or Board of Commissioners (the "Board") of the HRA.
- (b) Financial Feasibility. The Developer will provide to the HRA a financial feasibility analysis of the Project, including a detailed sources and uses of all funding and all expenditures expected for the construction of the Project and a Project pro forma on or before July 27, 2020. The financial feasibility analysis should specify what financing will be obtained for the Project and from what sources and the amount of equity to be contributed to the Project.
- (c) Blight Study. The HRA will engage LHB to provide a blight study of the Development Property to determine whether the Development Property would qualify for a redevelopment tax increment district. The Developer shall pay the costs of such study.
- (d) HRA Analysis of Project. Following the receipt from the Developer of the information set forth in Section 1(a) and (b), the HRA's fiscal consultant will conduct a financial analysis of the Developer and the Project. The purpose of the HRA's analysis is to determine the Developer's ability to finance the proposed Project. The analysis will consider such factors as the Developer's capability to arrange for financing, the anticipated level of assistance available to the Project from the HRA or other sources, and the Developer's ability to provide equity to the Project.
- (e) Contract Negotiation. On or before October 20, 2020, the parties will attempt in good faith to negotiate the terms of a contract for private development (the "Contract") which will provide the nature and timing of the private improvements to be constructed, the form, the amount, and conditions of any economic assistance to be provided by the HRA for the Project. The Contract will contain such additional terms as either party believes are necessary for the transaction.
- (f) Developer's Compliance with City's Inclusionary Housing Policy. Pursuant to the City's Inclusionary Housing policy, the Developer will be required to contribute fifteen percent (15%) of the total tax increment financing derived from the tax increment district to the HRA's Housing and Redevelopment Fund, unless at least twenty percent (20%) of all housing units in the Project are available at rates of sixty percent (60%) of AMI or less. The Developer expects that at least twenty percent (20%) of the housing units of the Project will be available at sixty percent (60%) of AMI or less.

2. Undertaking by Developer.

During the term of this Agreement, the Developer will undertake all of the activities necessary, in the Developer's discretion, to accomplish the activities described in Section 1 hereof required to be performed by the Developer.

3. HRA's Undertaking and Agreement.

The HRA agrees to cooperate with the Developer in the Developer's undertakings, agrees to utilize its best efforts, subject to the Developer's performance, to accomplish the activities described in Section 1 hereof, which includes an analysis of the financial feasibility of the Project and the nature of, area to be included, and the financial implications of any tax increment district which might be established.

4. Term.

This Agreement is effective from the date hereof through December 31, 2020, unless extended with approval of the Board, provided, in the event either party, after consultation with the other party, determines in good faith that the other party is not diligently pursuing the Project or its obligations hereunder; or the Developer determines, in good faith, that the Project is not feasible, such determining party may terminate this Agreement upon thirty (30) days written notice to the other. The HRA may also terminate this Agreement for failure of the Developer to provide additional funds pursuant to Section 5 hereof. The parties each waive any claim or cause of action that they may have against the other party based upon the termination of this Agreement by such other party. The parties may, by mutual written agreement, extend this Agreement for such further periods as determined to be appropriate from time to time.

5. Administrative Costs of HRA.

The Developer agrees and understands that it is responsible for and will pay to the HRA \$2,000 in HRA staff costs and all out-of-pocket costs incurred by the HRA (including without limitation reasonable attorney and fiscal consultant fees) in the negotiation and preparation of this Agreement and other documents and agreements in connection with the activities and the Project contemplated hereunder (collectively, the "Administrative Costs"). Administrative Costs shall be evidenced by invoices, statements or other reasonable written evidence of the costs incurred by the HRA.

In addition to the \$2,000 deposit for described above, upon execution of this Agreement, the Developer will deliver a deposit to the HRA in the amount of \$5,000 (the "Deposit") to pay Administrative Costs. At any time the Deposit drops below \$1,000, the Developer shall replenish the deposit to the full \$5,000 within thirty (30) days after receipt of written notice thereof from the HRA. The HRA shall provide invoices to the Developer for all payments deducted from the Deposit. At any time the Deposit is insufficient to pay invoices related to the Project, the HRA will ask for additional Deposits from the Developer. If the additional Deposit is not made within thirty (30) days following the date of such request, the HRA may elect to either suspend its performance under this Agreement or terminate this Agreement. Such suspension or termination will be effective on the date it is given in writing, or on such later date specified in the notification. Any unexpended or unencumbered portion of the Deposit shall be returned to the Developer upon the expiration or termination of this Agreement.

In addition, the Developer shall pay the fees related to the blight study prepared by LHB within ten (10) days of the HRA providing the invoice to the Developer.

6. Termination of Agreement.

This Agreement may be terminated upon five (5) days written notice by a party to the other party if:

- (a) in the respective good faith judgment of any party, an impasse has been reached in the negotiation or implementation of any material term or the completion or execution of any material condition of this Agreement or the Contract; or
- (b) a party fails to perform any of its obligations under this Agreement.

7. Miscellaneous.

- (a) This Agreement may be assigned to an affiliate of the Developer at a later date; provided, however, that the Developer or its principals will be the owner of the entity that will develop the Project.
- (b) This Agreement constitutes the entire agreement between the parties relative to the proposed Project. Unless specifically described herein, no obligation shall be inferred or construed.
- (c) Redevelopment of the Development Property will be in accordance with the Contract or other agreements which the parties shall, in good faith, attempt to negotiate during the term of this Agreement.
- (d) The Developer understands that further and separate action, for which no obligation is created hereunder, will be required before the HRA or the Developer is obligated to take various actions with respect to the Project. Those actions may include, without limitation:
  - 1) Creation of and approval of a tax increment district by the City Council and the Board;
  - 2) Zoning and subdivision approvals to the extent any are required;
  - 3) Construction of public improvements to serve the Project; and
  - 4) Negotiation of and approval of the Contract by the Board.
- (e) The Developer further understands that many of the actions which the HRA or the City may be called upon to take require the reasonable discretion and in some instances the legislative judgment of the HRA or the City, such actions may be made only following established procedures; and HRA may not, by agreement, agree in advance to any specific decision in such matters.

- (f) Notice or demand or other communication between or among the Parties shall be sufficiently given if sent by certified or registered mail, postage prepaid, return receipt requested or delivered personally:

PLH & Associates – Construction Services, LLC  
P.O. Box 390157  
Minneapolis, MN 55439  
Attn: \_\_\_\_\_

Richfield Housing and Redevelopment Authority  
6700 Portland Avenue South  
Richfield, MN 55422  
Attn: John Stark, Executive Director

(The remainder of this page is intentionally left blank.)

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective the date and year first above written.

HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RICHFIELD, MINNESOTA

By: \_\_\_\_\_  
Mary B. Supple  
Its: Chair

By: \_\_\_\_\_  
John Stark  
Its: Executive Director

PLH & ASSOCIATES – CONSTRUCTION  
SERVICES, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY**

[Insert legal description of Development Property]

[PID 2702824420134]

RC125-378 (JAE)  
660025v4



**STAFF REPORT NO. 25**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/20/2020**

REPORT PREPARED BY: Julie Urban, Housing Manager  
 OTHER DEPARTMENT REVIEW: N/A

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
 7/10/2020

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the adoption of a resolution approving revisions to the Inclusionary Affordable Housing Policy.**

**EXECUTIVE SUMMARY:**

In 2018, the City adopted an Inclusionary Affordable Housing Policy (Policy) requiring that all new development receiving financial assistance from the City include affordable housing. Specifically, the Policy requires all housing developers receiving public subsidy to either:

- Make at least 20% of all housing units be affordable to either renters earning less than 60% of the Area Median Income (AMI) or owners earning less than 115% of the AMI, or
- Pledge 15% of the net-present-value of the subsidy they receive to the Richfield Housing and Redevelopment Fund, and
- Provide 90-day notice of sale, and
- Agree to not discriminate against renters receiving rental subsidies (including the Section 8 Housing Choice program).

At a work session on August 16, 2019, policymakers reviewed several potential revisions to the Policy and directed staff to do further research on the following potential changes:

1. Encourage units with deeper affordability;
2. Encourage accessible and affordable units;
3. Apply the policy to all public land sales regardless of whether or not it constitutes "Financial Assistance;"
4. Consider the cost of requiring that affordable units be spread across a mix of bedroom sizes, and
5. Consider the impact converting the policy to an ordinance, thereby requiring affordability in all developments, would have on new development.

A follow-up work session was scheduled for March 16, 2020, which was then cancelled due to the COVID-19 pandemic which caused limits on public meetings. While there continues to be a significant need for affordable housing, the economic uncertainty caused by the pandemic has resulted in a market in which developers are using more discretion about the financial viability of projects and, thus, potentially makes an Inclusionary Housing Policy/Ordinance a less useful tool.

Given that consideration, staff recommends the following:

1. Update the Inclusionary Housing policy to encourage deeper affordability:

Affordability Level	% of Units
---------------------	------------

RENTAL	
60% of Area Median Income (AMI)	20%
50% of AMI	15%
30% of AMI	10%
OWNER-OCCUPIED	
115% of AMI	20%
100% of AMI	15%
80% of AMI	10%

A mix of affordability would also be allowed.

Note: The City's primary local source for subsidizing development is Tax Increment Financing (TIF). In the case of a Redevelopment TIF District, the lower percentage of more deeply affordable units would be an option; however, Housing TIF Districts do not allow for fewer affordable units if deeper affordability is provided, so we're unlikely to see deeper affordability in Housing TIF Districts without additional outside resources. Staff was working with other cities on a change to the current law to allow greater flexibility in using TIF for more deeply affordable units; however, no progress was made this past Legislative session.

2. Require that one percent of all new units constructed be fully accessible. Because TIF is the City's primary source for subsidizing affordable units, and TIF does not allow for fewer affordable units if accessible units are provided, a minimal requirement of one percent is recommended. An estimated cost to provide a fully accessible unit is \$4,400-\$5,400 and staff believes that amount can be absorbed by most projects.

3. The Policy would apply to all property purchased from the City, regardless of the sale price.

4. A review of the costs associated with providing affordable units with a greater number of bedrooms indicates that current projects would be unable to do so without additional funding (e.g., \$60,000-\$70,000 per unit). Because of the tight economics of most Richfield projects and the current economic uncertainty, staff recommends that we not move forward on this provision at this time.

5. At the August work session, policymakers also discussed the possibility of applying the Inclusionary Housing Policy to all new development but wanted a better understanding of how that might impact development. Since that time, staff has spoken with the City's financial consultant and developers of recent Richfield projects, analyzed pro formas and rents per square foot, estimated the cost of providing affordable units at various sizes and income levels, and reviewed other cities' ordinances and markets. The conclusion of that analysis was that Richfield's rental housing market is not strong enough and the financial resources not great enough to support a requirement of affordability for all developments without curtailing development in the community. Given that conclusion and the added economic uncertainty caused by the pandemic, staff does not recommend converting the Policy to an ordinance at this time.

An additional change recommended by staff is to increase the number of units required in a project, before the Policy is applicable, from five to twenty. Since the August work session, staff has gained a deeper understanding of what is involved in income-qualifying tenants and the monitoring required. Given the significant staff and financial resources needed to do this work, it would be onerous and inefficient to require it of small projects and would serve as a deterrent to small infill projects.

**RECOMMENDED ACTION:**

**By motion: Adopt a resolution approving revisions to the Inclusionary Affordable Housing Policy.**

## **BASIS OF RECOMMENDATION:**

### **A. HISTORICAL CONTEXT**

- In 2013 the Richfield City Council and HRA adopted a Housing Policy Vision Statement that supports a "full range and balance of housing types that match the choices of its diverse residents."
- Since April of 2017, the HRA has been considering the need to preserve the City's Naturally Occurring Affordable Housing (NOAH) and to ensure the construction of a mix of housing affordability.
- In October 2017 the City Council and Housing and Redevelopment Authority (HRA) established goals and a work plan for strengthening the City's apartment communities. The proposed Policy supports these goals and is one step in the work plan.
- In May 2018, the City Council and HRA directed staff to move forward on drafting a Policy.
- On July 16, 2018, the HRA reviewed a draft Policy.
- The City Council adopted the proposed Policy in concept at their September 25 meeting and will vote to affirm this action at their October 23 meeting.

### **B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The Policy furthers the Comprehensive Plan goal to provide a full range of housing choices that meet residents' needs at every stage of their lives, and ensure a healthy balance of housing types that meets the needs of a diverse population with diverse needs.
- The Comprehensive Plan identifies the need in the community for an additional 66 units of housing affordable at 30% of the AMI. The proposed Policy change encourages the development of these more deeply affordable units.
- The Policy is consistent with the City's Housing Visioning Statement that calls for a full range and balance of housing types and its Affordable Housing Policy Statement, which encourages developments to contain a mix of market-rate and affordable units, with a higher proportion of market-rate units.

### **C. CRITICAL TIMING ISSUES:**

- The Policy revisions would not apply to projects currently in process, although staff has been encouraging both deeper affordability and accessible units with some of the projects in process.

### **D. FINANCIAL IMPACT:**

- Providing affordable housing requires a subsidy, and the deeper the affordability, the greater the amount of the subsidy. To balance that greater cost, the proposed Policy revisions require a lesser percentage of units the greater the affordability.
- Staff is not recommending the Policy be broadened to apply to all new development because market-rate rents in Richfield are not currently high enough for projects to absorb the cost of providing affordable units without government subsidy, and the available subsidy is not enough to realize all developments. If projects are not financially feasible, they will not occur, and the City will lose the opportunity to see redevelopment occur and help us realize other City goals (e.g., diversified tax base, range of housing choices, removal of blighted buildings). In addition, increasing the supply of market-rate rental housing can improve the affordability of existing rental housing and also reduce the pressure to convert Naturally Occurring Affordable Housing (NOAH) to more upscale housing.

### **E. LEGAL CONSIDERATION:**

- The City has the authority to create an Inclusionary Affordable Housing Policy that applies to the use of its financial resources.

## **ALTERNATIVE RECOMMENDATION(S):**

- The HRA may choose to:
  - approve the revisions with changes;
  - wait to approve the revisions until such time that an ordinance applying to all new development can be proposed, or

- not approve the revisions.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

N/A

**ATTACHMENTS:**

Description	Type
☐ Resolution	Resolution Letter
☐ Proposed Policy Revisions	Backup Material

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION APPROVING THE ADOPTION OF  
AMENDMENTS TO THE INCLUSIONARY AFFORDABLE HOUSING POLICY**

**WHEREAS**, the Richfield Housing and Redevelopment Authority (HRA) adopted an Inclusionary Housing Policy in 2018 that furthers the development of affordable housing within in the City; and

**WHEREAS**, the HRA wishes to further support development of high quality housing in the community for households of various income levels, ages and sizes in order to help the City meet its goals of preserving and promoting economically diverse housing options in the City; and

**WHEREAS**, the HRA wants to ensure that both the public and private sectors continue to create affordable housing opportunities in the City; and

**WHEREAS**, the HRA believes that adoption of a policy setting criteria and incentives for developers to build new affordable units will assist the City in achieving its inclusionary housing goals; and

**WHEREAS**, the HRA regularly reviews its policies and periodically makes changes to ensure consistency with current City policies and market conditions.

**NOW, THEREFORE, BE IT RESOLVED** by the Housing and Redevelopment Authority in, and of, the City of Richfield, Minnesota, that:

1. The Inclusionary Affordable Housing Policy as revised is hereby approved and adopted.
2. HRA staff is authorized to carry out the policy effective immediately.

Adopted by the Housing and Redevelopment Authority in, and of, the City of Richfield, Minnesota this 20th day of July, 2020.

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Mary B. Supple, Chair

ATTEST:

---

Maria Regan Gonzalez, Secretary

City of Richfield  
 Richfield Housing and Redevelopment Authority  
 Richfield Economic Development Authority  
**Inclusionary Affordable Housing Policy**

The City of Richfield, Richfield Housing and Redevelopment Authority, and Richfield Economic Development Authority are committed to building a community that is welcoming and affordable to a diverse population of individuals and families at all stages of their lives. As such, we hereby establish the following policy for the inclusion of affordable housing in development proposals.

Requirements

1. Housing Development Projects containing the construction of at least 520 new units ~~which that~~ receive Financial Assistance or that purchase property from the HRA, EDA or City
  - a. must contain at least a percentage of units that are affordable at one or more of the following levels over a period of ten years or the duration of the subsidy (whichever is longer):
    - i.

<u>Affordability Level</u>	<u>% of Units</u>
<u>RENTAL</u>	
<u>60% of Area Median Income (AMI)</u>	<u>20%</u>
<u>50% of AMI</u>	<u>10%</u>
<u>30% of AMI</u>	<u>5%</u>
<u>OWNER-OCCUPIED</u>	
<u>115% of AMI</u>	<u>20%</u>
<u>100% of AMI</u>	<u>10%</u>
<u>80% of AMI</u>	<u>5%</u>

- ii. A combination of affordability levels may be considered (e.g., 10% at 60% AMI and 5% at 30% AMI);
- iii. must contain at least 1% of all rental units that are fully-accessible;
- iv. At least 20% of the grand total of housing units in a mixed rental/ownership development must be affordable at the affordability levels established in 1.a)i, and

~~a. Must contain at least 20% affordable units~~

- ~~I. At least 20% of rental housing units must be made affordable to tenant households earning not more than 60% of the Area Median Income over a period of ten years or the duration of the subsidy (whichever is longer);~~
- ~~II. At least 20 % of owner occupied housing units must be made affordable to, and initially sold to, households earning no more than 115% of the Area Median Income;~~
- ~~III. At least 20% of the grand total of housing units in a mixed rental/ownership development must be affordable at the affordability levels established in 1.a)i and 1.a)ii,~~

- or;
- b. Must contribute to the Richfield Housing and Redevelopment Fund
    - i. 15% of the “net present value” of Tax Increment generated by the project (or 15% of the net present value of other types of assistance) must be pledged to the Richfield Housing and Redevelopment Fund over a period of ten years or the duration of the subsidy (whichever is longer), or;
    - ii. A pro-rata combination of the above (i.e. 10% affordable units and a 7.5% contribution) may be considered, and;
  - c. Must agree to provide 90 days’ advance notice to the public body providing funding of any sale of the property,  
and;
  - d. Must agree to not discriminate against households utilizing Housing Choice Vouchers (Section 8) or other forms of rental assistance.
2. Non-Housing Development Projects that receive Financial Assistance from HRA, EDA or City and which result in the loss of affordable housing:
- b. Affordable housing units eliminated by the project must be replaced on-site or at another location in Richfield by the developer at similar affordability levels, or;
  - c. 5-15% (depending on the magnitude of the loss of affordable housing) of the “net present value” of the Financial Assistance provided must be pledged to the Richfield Housing and Redevelopment Fund over a period of ten years or the duration of the subsidy (whichever is longer).

### Incentives

3. Housing Development Projects which include affordable units (as outlined in 1a above) are eligible to apply to the City for the following considerations regardless of whether or not they receive Public Financial Assistance:
- i. Building Permit Fee Reductions (10% reduction for rehabilitation and/or 5% reduction for new construction);
  - ii. 4d Property Tax Reduction (rental projects);
  - iii. Consideration of code flexibility (e.g., smaller setbacks, excessive impervious surface, etc.) in planned unit developments;
  - iv. A housing unit density bonus of 5-15% (e.g., a project in an area that allows 8-24 units/acre could add an additional 1-4 units/acre and remain in compliance).

### Exceptions

4. With regards to “scattered-site single family housing development,” at least 20% of the units newly constructed or rehabilitated and converted to long-term affordability in any three-year period must meet the proscribed affordability requirements.
5. The City Council or Board of Commissioners of the Housing and Redevelopment Authority or Economic Development Authority may vary the application of this policy as circumstances warrant with the adoption of findings of the reasons for doing so.



Adopted as revised:

This \_\_\_\_ day of \_\_\_\_\_, 2020, by the Richfield City Council.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

This \_\_\_\_ day of \_\_\_\_\_, 2020, by the Richfield Housing and Redevelopment Authority.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

This \_\_\_\_ day of \_\_\_\_\_, 2020, by the Richfield Economic Development Authority.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary



**STAFF REPORT NO. 26**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/20/2020**

REPORT PREPARED BY: Melissa Poehlman, Asst. Community Development Director  
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
7/16/2020

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider a request to purchase the property at 6701 17th Avenue South for \$412,000.**

**EXECUTIVE SUMMARY:**

On June 25, 2020, staff was contacted by Attorney Craig Greenberg of Huffman, Usem, Crawford, Greenberg & Smith, P.A. who indicated that he had been hired by the owner of property located at 6701 17th Avenue South (Property) to request that the Housing and Redevelopment Authority (HRA) consider a proposal to purchase the Property. On behalf of the Property owner, Mr. Greenberg has submitted a proposal for the HRA to purchase the Property for \$412,000 (\$350,000 for the purchase of the home and \$62,000 in relocation benefits) and all closing costs. HRA staff has consulted with the HRA Attorney and we recommend that the HRA reject this proposal.

On October 24, 2017, the HRA entered into a contract for private development with Chamberlain Apartments LLC (Developer) related to the construction of a new multi-family development consisting of 283 new apartments, the rehabilitation of 33 existing apartments, and the construction of a new public road (Development Project). The Property is located on the corner of 17th Avenue and a remaining half-block of 67th Street East, immediately adjacent to the Development Project area. As part of the Development Project, the Developer attempted to purchase the Property; however, the parties were unable to come to an agreement and the project moved forward without including the Property in the Development Project.

In 2018, the owner of the Property expressed an interest in selling the Property to the HRA. HRA staff met with the owner, hired a relocation services company to help her find a home, and ultimately brought before the HRA a proposal to purchase the home for \$310,000. This offer was based on valuations by the City's appraiser (\$248,000) and the land owner's appraiser (\$281,000), plus "relocation costs" as defined by the Federal Uniform Relocation Act; despite the fact that this was a voluntary sale and the HRA would not be required to pay any relocation benefits. On November 19, 2018, the HRA adopted a resolution approving the terms of a Purchase Agreement for 6701 17th Avenue South. Six weeks later, on December 31, 2018, the HRA's offer to purchase the home expired.

City and HRA staff continued to meet with the owner after the expiration of the Purchase Agreement, and in July 2019 hired a mediator to help the parties negotiate. On August 21, 2019, the mediator informed both parties that she was terminating the mediation process, as both parties were at an impasse. On August 29, 2019, in response to inquiries, HRA Executive Director Stark sent the owner an email stating that there was no pending offer for either the City or the HRA to purchase the Property and that neither entity was required to do so.

**RECOMMENDED ACTION:**

**By motion: Reject an offer to purchase property at 6701 17th Avenue South.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

See Executive Summary & attached Proposal from Owner's Attorney.

**B. POLICIES (resolutions, ordinances, regulations, statutes, etc):**

- The Minnesota Uniform Relocation Act requires payment of relocation benefits if an occupant of a dwelling is displaced from that dwelling. A displaced person is a person who moves as a direct result of a written notice of an intent to acquire or the acquisition of real property in whole or part.
- It is the opinion of the HRA Attorney that the owner of 6701 17th Avenue South is not a displaced person and the HRA has no obligation to purchase the Property or pay any relocation benefits.

**C. CRITICAL TIMING ISSUES:**

- The HRA has been requested to provide the owner of 6701 17th Avenue South with a Relocation Letter or equivalent stating that the owner of the Property will qualify to buy a home with a value up to \$350,000 (estimate of current home value/replacement cost) on or before July 21, 2020.

**D. FINANCIAL IMPACT:**

- Funds for the purchase of the Property were not allocated in either the 2020 HRA Budget or 2021 Proposed HRA Budget.
- Purchase of the Property is not an identified priority for the HRA.

**E. LEGAL CONSIDERATION:**

- See attached legal opinion

**ALTERNATIVE RECOMMENDATION(S):**

- None

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Craig Greenberg, Attorney for Owner of 6701 17th Ave S

**ATTACHMENTS:**

Description	Type
☐ Proposal from Owner's Attorney	Exhibit
☐ Legal Opinion	Exhibit

## Communication from Attorney regarding 6701 17<sup>th</sup> Avenue South

### June 25, 2020 Communication

Ms. Rodriguez:

Please be advised that my law firm has been retained by Jeanne Streitz with regard to her ongoing dispute with the Richfield Housing and Redevelopment Authority ("HRA"). As you know, Ms. Streitz's property is located at 6701 17<sup>th</sup> Ave South, Richfield, Minnesota (the "Property"). It is my hope that our assistance in this matter will result in acceptable settlement. Please direct all communication going forward to my attention.

I have reviewed some of Ms. Streitz's extensive file on this matter and I believe that time is right to get this matter resolved in the next 30 days. Before we proceed any further, I would like to have a phone call with you or another appropriate representative to discuss prospects and procedures to move this matter toward a final resolution. I see that at one point a mediation took place and perhaps that might be a successful tool with my involvement. It is our preference to resolve this matter amicably without the need to commence legal proceedings.

Ms. Streitz is now actively seeking a replacement home and timing will be critical. As part of any resolution, we will need to be able to show that she is a viable cash buyer.

Please let me know when it would be a good time to have a brief phone call. I look forward to hearing from you. Thank you.

Very Truly Yours,

Huffman, Usem, Crawford, Greenberg & Smith, P.A.

[Craig D. Greenberg](#)

Craig D. Greenberg  
5101 Highway 55  
Suite 1000  
Golden Valley, MN 55422  
763-545-2720 (p)  
763-545-2350 (f)

### July 13, 2020 Communication

Julie and Mary:

Thank you for the phone call last week. I have talked with my client and have formulated a proposal as you requested. Ms. Streitz proposes the following:

1. On or before July 21, 2020, the HRA/City will provide Ms. Streitz with a Relocation Letter or equivalent, which will allow Ms. Streitz to search for and make a qualified offer on new housing. She will then proceed in good faith to find new housing within 60 days. The letter will indicate that she would qualify up to \$350,000 (estimate of current home value/replacement cost).

2. During the next 20 days, the parties will exchange written offers in an attempt to reach a global settlement and enter into a purchase agreement. That settlement would also include an additional relocation payment in an amount not less than \$62,000. The parties may, but shall not be required to exchange new appraisals.
3. If a purchase agreement is not executed within 30 days from the date hereof, the parties agree to mediate the dispute before a mutually acceptable mediator. The mediation would be scheduled as soon as possible after the expiration of the 30 day period.

My client would prefer to resolve this matter without the need for litigation. I hope that my involvement will move this matter towards an amicable resolution. Please contact me once you have reviewed the foregoing. Thank you.

Very Truly Yours,

Huffman, Usem, Crawford, Greenberg & Smith, P.A.

[Craig D. Greenberg](#)

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Golden Valley, MN 55422  
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**July 15, 2020 Communication**

FOR PURPOSES OF SETTLEMENT DISCUSSIONS ONLY

Julie:

Thank you for your email. The \$62,000 comes from the prior offer that was proposed in the 2018 Purchase Agreement. (See paragraph 3B). We agree that the total would be \$412,000. However, the HRA would also pay all closing costs, including deed tax and recording costs. If this matter is not resolved quickly, Seller will also seek reimbursement of her attorney's fees.

Please let me know if you have any other questions. We look forward to a substantive response this week. Time is of the essence. Thank you.

Very Truly Yours,

Huffman, Usem, Crawford, Greenberg & Smith, P.A.

*Craig D. Greenberg*

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**JULIE A. EDDINGTON**

Attorney at Law  
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September 4, 2019

Katie Rodriguez, City Manager  
John Stark, HRA Executive Director  
Melissa Poehlman, Assistant Community Development Director

Re: 6701 17<sup>th</sup> Avenue

Dear Katie, John, and Melissa,

You have asked for our opinion regarding Jeanne Eileen Streitz's assertion that the City of Richfield (the "City") and/or the Housing and Redevelopment Authority in and for the City of Richfield (the "HRA") is required to purchase her home and provide relocation benefits to her pursuant to Minn. Stat. Sections 117.50 to 117.56 (the "Minnesota Uniform Relocation Act"), including but not limited to the provision of 'last resort housing' benefits. It is our opinion that Ms. Streitz is not eligible for relocation benefits under the Minnesota Uniform Relocation Act and neither the City nor the HRA are required to buy Ms. Streitz's property or pay her relocation benefits. Our legal reasoning for this opinion is set forth below.

## **BACKGROUND**

As you know, on October 24, 2017, the HRA entered into a contract for private development (the "Contract") with Chamberlain Apartments LLC (the "Developer") pursuant to which the Developer agreed to develop a multifamily housing development consisting of three buildings with approximately 283 apartment units, substantially rehabilitate three 11-unit apartment buildings, construction of underground parking, and construct a public roadway (the "Project") in the City. The Project was intended to be constructed on property owned by both the HRA and the Developer, and on additional land to be purchased by the Developer after the Contract was executed.

In order to comply with the Minnesota Uniform Relocation Act, the HRA required the Developer to pay relocation benefits for any additional property it purchased for the Project. Section 3.4 of the Contract required the following:

Section 3.4. Relocation. For each parcel of the Additional Property yet to be acquired by the Developer (as described in EXHIBIT A), the Developer is responsible for complying with Minn. Stat. Sections 117.50 to 117.56 (the "Minnesota Uniform Relocation Act") and providing evidence of such compliance to the Authority. The Parties acknowledge that no tenants will be relocated from the three buildings located on the Additional Property to be purchased by Kraus Anderson (to be contributed to Developer). All rehabilitation of the three buildings will be done with tenants remaining in their units.

Although the Developer approached the homeowner of 6701 17<sup>th</sup> Avenue (Jeanne Eileen Streitz) multiple times to purchase her property, the Developer was unable to obtain an executed purchase agreement from Ms. Streitz. The Developer determined it was necessary to move forward with the Project without purchasing Ms. Streitz's property.

The Developer attempted to purchase her property, but she was unwilling to execute a purchase agreement. Ms. Streitz continued to contact HRA staff noting her unhappiness regarding the development and construction of the Project. The HRA met with Ms. Streitz, hired a relocation services company to help her find a home, and ultimately offered to purchase her home and *voluntarily* agreed to provide relocation benefits. Ms. Streitz refused numerous reasonable offers to purchase her home provided by the Developer and the HRA. Instead, Ms. Streitz repeatedly requested that the HRA build her a new home since she believes there is no comparable replacement dwelling in the area. However, the relocation services consultant found four comparable replacement dwellings for her in September 2018. In order to find a compromise, the City and HRA initiated a mediation between Ms. Streitz and the City and HRA. Unfortunately, an agreement could not be reached due to Ms. Streitz's unwillingness to either accept the HRA's offer or to make a formal counteroffer for the sale of her home. The mediator eventually terminated the mediation process.

## **TIMELINE**

Below is the timeline regarding the offers to purchase Ms. Streitz's property:

- On October 24, 2017, the Contract was executed by HRA and the Developer.
- In July 2018, the HRA conveyed property to the Developer and the Developer commenced the Project.
- On August 21, 2018, Evergreen Land Services Company (an independent relocation benefits consultant) delivered an initial offer to purchase Ms. Streitz's home for \$248,000. This letter indicated that the offer was based on an independent appraisal by BCL Appraisals, Inc.
- On September 5, 2018, Ms. Streitz submitted her own appraisal by Crawford Appraisal to Evergreen Land Services, indicating an appraised value of \$281,000 for her home.
- On September 6, 2018, Ms. Streitz was sent a letter from Evergreen Land Services Company indicating that the HRA had offered to buy her home and was willing to pay relocation benefits.
- Over the course of the next several weeks, Evergreen Land Services provided close to a dozen comparable homes to Ms. Stretiz for consideration.
- On October 2, 2018, Melissa Poehlman sent an email to Ms. Streitz stating that a sale of her property would be considered a "voluntary sale" and that provisions of the Minnesota Uniform Relocation Act, including "last resort housing," would only apply if it were an involuntary sale.
- On November 19, 2018, Evergreen Land Services Company sent another letter to Ms. Streitz indicating that the purchase agreement provided to Ms. Streitz was the HRA's final offer for her home and the offer would expire on December 31, 2018.
- On November 19, 2018, the Richfield Housing and Redevelopment Authority adopted a Resolution approving the terms of a Purchase Agreement for a "global settlement" of \$310,000. This Agreement required Ms. Streitz to waive any claim to relocation benefits under the Uniform Relocation Act and required Ms. Streitz's acceptance by December 31, 2018.
- On December 31, 2018, HRA's offer to purchase Ms. Streitz's property, as offered through Evergreen Land Services, expired.
- On December 31, 2018, HRA's "global offer" to purchase Ms. Streitz's property expired.



- On February 5, 2019, City and HRA staff and the HRA attorney met with Ms. Streitz and reiterated that the HRA's offer to buy Ms. Streitz's property was a voluntary sale and the HRA had no obligation to comply with the Minnesota Uniform Relocation Act.
- On March 1, 2019, the City Manager sent Ms. Streitz an email containing the following: "I want to reiterate that the HRA's offer to purchase your home was, and continues to be, on a voluntary basis. The HRA is not required to buy your home nor are you required to sell your home to the HRA. As such, many provisions of the Uniform Relocation Act will not apply in this case (such as a requirement to make a 'payment of last resort' or facilitate the construction of a new home...)"
- On July 18, 2019, City and HRA staff met with Ms. Streitz and mediator Aimee Gourlay, and again stated that the HRA's offer to purchase Ms. Streitz's property would be on a voluntary basis and would not trigger the requirement to comply with the Minnesota Uniform Relocation Act.
- On August 21, 2019, mediator Aimee Gourlay informed both parties that she was terminating the mediation process, as both parties were at an impasse.
- On August 29, 2019, HRA Executive Director John Stark sent you an email stating, "there is no pending offer for the City or HRA to buy your home and our attorneys have continued to conclude that neither the City nor the HRA have any legal responsibility to buy your home."

## LEGAL ANALYSIS AND OPINION

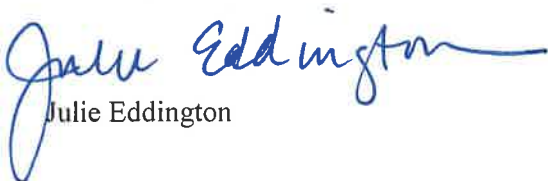
The Minnesota Uniform Relocation Act requires the payment of relocation benefits if an occupant of a dwelling is *displaced* from that dwelling. A displaced person is a person who moves from real property or moves her personal property from real property as a direct result of a written notice of intent to acquire or the acquisition of real property in whole or in part.

It is our opinion that if the Developer had purchased Ms. Streitz's property for the Project, Ms. Streitz would have been entitled to relocation benefits if she had moved from her property. However, once the Developer determined it could not reach an agreement with Ms. Streitz to buy her property and determined to construct the Project without utilizing her property, Ms. Streitz was no longer eligible for relocation benefits. The HRA's offer to acquire Ms. Streitz's property, including a voluntary payment of relocation benefits, expired on December 31, 2018.

It is our further opinion that Ms. Streitz is not a displaced person as defined under the Minnesota Uniform Relocation Act. Because she is not a displaced person, neither the City nor the HRA is required to buy Ms. Streitz's property or pay her relocation benefits.

Please contact me with any questions.

Sincerely,

  
Julie Eddington